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भारत का राजपत्र
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 10 अगस्त, 1998

का.आ. 1640.—यतः बैंककारी विनियमन अधिनियम, 1949 की धारा 45 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा उसके अनुसार केन्द्रीय सरकार ने मिरज स्टेट बैंक लि., मिरज के यूनियन बैंक आफ इंडिया के साथ विलय के लिए 29 जुलाई, 1985 को एक योजना मंजूर की थी ।

यतः उक्त योजना के खंड 6 के उपखंड (ix) के अधीन यूनियन बैंक आफ इंडिया द्वारा मिरज स्टेट बैंक. लि., मिरज की परिसम्पत्तियों का अनन्तिम रूप में मूल्यांकन अपेक्षित था, जो कि नियत तारीख से बारह वर्षों की समाप्ति के पश्चात् नियत तारीख को अनन्तिम रूप से मूल्यांकित कर लिया गया है ।

यतः यूनियन बैंक आफ इंडिया ने यह अभ्यावेदन किया है कि बड़ी संख्या में परिसम्पत्तियां अन्तर्ग्रस्त होने और बैंक के प्रयासों के बावजूद अधिकांश मदों की वसूलियां अभी बाकी होने के कारण बैंक, विलय योजना के खंड 6 के उपखंड (ix) में विनिर्दिष्ट समय के भीतर परिसम्पत्तियों का अन्तिम रूप से मूल्यांकन करने में असमर्थ रहा है ।

और यतः, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने पर इस बात से संतुष्ट है कि विलय योजना को लागू करने में कठिनाई पैदा हो गई है और उतना समय बढ़ा कर जितने में परिसम्पत्तियों का अन्तिम रूप से मूल्यांकन अपेक्षित है, उक्त कठिनाई को दूर करना जरूरी है ।

अतः, अब मिरज स्टेट बैंक लि., मिरज का यूनियन बैंक आफ इंडिया के साथ विलय की 29 जुलाई, 1985 की विलय योजना के खंड 18 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा निदेश देती है कि यूनियन बैंक आफ इंडिया भारतीय रिजर्व बैंक के परामर्श तथा उसके अनुमोदन से मिरज स्टेट बैंक लि., मिरज की उन

परिसम्पत्तियों का, जिनकी वसूली और मूल्यांकन नहीं हुआ है, मूलतः नियत तारीख से और दो वर्षों की अवधि के भीतर (अर्थात् 29 जुलाई, 1999 तक) मूल्यांकन करेगा ।

[फा. सं. 15/7/98-बी० ओ० ए०]

बी. ए. नारायणन, अवर सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 10th August, 1998

S.O. 1640.—Whereas on 29th July 1985, a Scheme of Amalgamation of the Miraj State Bank Limited, Miraj, with the Union Bank of India, was sanctioned by the Central Government in exercise of the powers conferred by and in accordance with Section 45 of the Banking Regulation Act, 1949;

Whereas under sub-clause (ix) of clause 6 of the said Scheme, the Union Bank of India was required to make a final valuation of the assets of the Miraj State Bank Ltd., Miraj, which have been provisionally valued on the prescribed date, on the expiry of twelve years from the prescribed date;

Whereas the Union Bank of India has represented that in view of the large number of assets involved and the recovery of most of the items yet to be realised in spite of its efforts, it has not been able to make the final valuation within the time specified in sub-clause (ix) of clause 6 of the Scheme of Amalgamation;

And whereas the Central Government, in consultation with the Reserve Bank of India, is satisfied that difficulty has arisen in giving effect to the Scheme of Amalgamation, which, it is necessary to remove by extending the time within which the final valuation of assets is required to be made;

Now, therefore, in exercise of the powers conferred by clause 18 of the Scheme of Amalgamation dated 29 July 1985 of the Miraj State Bank Ltd., Miraj with the Union Bank of India, the Central Government hereby directs that the Union Bank of India shall, in consultation with and with the approval of the Reserve Bank of India, value the assets of the Miraj State Bank Ltd., Miraj which have not been realised and valued, within a period of further two years from the originally prescribed date (i.e. by 29th July, 1999).

[F. No. 15/7/98-BOA]

B. A. NARAYANAN, Under Secy.

विदेश मंत्रालय

(कोंसूलर अनुभाग)

नई दिल्ली, 6 अगस्त, 1998

का.आ. 1641.—राजनयिक कोंसली अधिकारी (शपथ एवम् शुल्क) अधिनियम 1948 (1948 का 41वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा भारत का दूतावास रियाद में सहायक अधिकारी श्री हरी सिंह को 6-8-98 से सहायक कोंसल अधिकारी का कार्य करने के लिए प्राधिकृत करती है ।

[सं. टी.-4330/1/98]

एन.यू. अविरचन, अवर सचिव (पी.वी.एस.)

MINISTRY OF EXTERNAL AFFAIRS

(Consular Section)

New Delhi, the 6th August, 1998

S.O. 1641.—In pursuance of the Clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Hari Singh, Assistant in the Embassy of Riyadh to perform the duties of Assistant Consular Officer with effect from 6-8-1998.

[No. T-4330/1/98]

N. U. AVIRACHEN, Under Secy. (CONS)

वाणिज्य मंत्रालय

नई दिल्ली, 4 अगस्त, 1998

का.आ. 1642.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में वाणिज्य मंत्रालय के अन्तर्गत आने वाले निम्नलिखित कार्यालयों को अधिसूचित करती है, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है :-

1. दि प्लास्टिक एण्ड लिनोलियम्स एक्सपोर्ट प्रमोशन कौंसिल
   सेंटर 1, ग्यारहवीं मंजिल,
   यूनिट नं 1, वर्ल्ड ट्रेड सेंटर,
   कफ परेड कोलाबा, मुम्बई-400005

2. एम एम टी सी लि.,
   दिल्ली क्षेत्रीय कार्यालय (नार्थ जोन),
   दूसरी मंजिल, एक्सप्रैस बिल्डिंग,
   बहादुरशाह जफर मार्ग, नई दिल्ली-110002

3. एम एम टी सी लिमिटेड,
   उप क्षेत्रीय कार्यालय,
   बी-1228, इन्द्र नगर,
   लखनऊ (उत्तर प्रदेश)

4. एम एम टी सी लि.,
उप क्षेत्रीय कार्यालय,
मथुरा रोड,
फरीदाबाद ।

[सं. ई-11013/1/93-हिन्दी]
रामकुमार कलोरिया, निदेशक (राजभाषा)

MINISTRY OF COMMERCE

New Delhi, the 4th August, 1998

S.O. 1642.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for Official purposes of the Union), Rules 1976, the Central Government hereby notifies the following Offices under the Ministry of Commerce whereof more than 80% staff have acquired working knowledge of Hindi :—

1. The Plastics & Linoleums Export Promotion Council,
Centre 1, 11th Floor,
Unit No. 1, World Trade Centre,
Cuffe Parade, Colaba,
Mumbai-400005

2 M.M.T.C. Ltd.,
Delhi Regional Office (North Zone)
2nd Floor, Express Bldg.,
Bahadur Shah Zafar Marg,
New Delhi-110002

3. M.M.T.C. Ltd.,
Sub Regional Office,
B-1228, Inder Nagar,
Lucknow (U.P.)

4. M.M.T.C. Ltd.,
Sub Regional Office,
Mathura Road, Faridabad

[No. E-11013/1/93-Hindi]
R. K. CALORIYA, Director (OL)

नई दिल्ली, 5 अगस्त, 1998

का.आ. 1643.—निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, खनिज तथा अयस्क (ग्रुप-टी) अर्थात् कच्चे लोहे का बेलारी में निर्यात से पूर्व निरीक्षण करने के लिए एम आई जी 11/10 के एच बी कालोनी तिलक नगर, कैंटोमेंट बेलारी-4 में स्थित मैसर्स थैराप्यूटिक्स कैमिकल रिसर्च कार्पोरेशन को जिनका रजिस्ट्रीकृत कार्यालय थैराप्यूटिक्स कैमिकल रिसर्च कार्पोरेशन शिव इंडस्ट्रीयल एस्टेट, पटेल रोड, एक्स लेन वाईकुला गुड्स डिपो के पास बम्बई-400012 में है को 15 4-98 से और आगे तीन वर्ष की अवधि के लिए निम्न शर्तों के अधीन एतद्द्वारा अभिकरण के रूप में मान्यता देती है अर्थात् :—

(i) मैसर्स थैराप्यूटिक्स कैमिकल रिसर्च कार्पोरेशन निर्यात, निरीक्षण परिषद् द्वारा इस संबंध में नामित अधिकारी को अपने द्वारा अपनाई गयी निरीक्षण पद्धति की जांच करने के लिए पर्याप्त सुविधाएं देगी ताकि खनिज तथा अयस्क ग्रुप-टी अर्थात् कच्चे लोहे के निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अन्तर्गत निरीक्षण का प्रमाण पत्र दिया जा सके।

(ii) मैसर्स थैराप्यूटिक्स कैमिकल रिसर्च कार्पोरेशन इस अधिसूचना के अधीन अपने कृत्यों के पालन में ऐसे निर्देशों द्वारा आबद्ध होगी जो निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण) समय-समय पर लिखित रूप में दें ।

[फाईल सं. 5/3/98-ई आई एण्ड ई पी]
प्रभ दास, निदेशक

New Delhi, the 5th August, 1998

S.O. 1643.—In exercise of the powers conferred by Sub-Section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises, for a further period of three years from 15-4-1998, M/s. Therapeutics Chemical Research Corporation located at MIG II/10, KHB Colony, Tilak Nagar, Contonement, Bellary-4, having their registered Office at Therapeutics Chemical Research Corporation, Shiv Industrial Estate Parel Road, X Lane Near Byculla Goods Depots, Bombay-400012 as an agency for the inspection Minerals & Ores Group-I namely, Iron Ore prior to export at Bellary subject to the following conditions namely :—

(i) that M/s. Therapeutics Chemical Research Corporation, shall give adequate facilities to the Officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in granting the certificate of inspection Rule 4 of the Export of Minerals and Ores, Group-I (Inspection) Rules, 1965;

(ii) that M/s. Therapeutics Chemical Research Corporation in the performance of their function under this notification shall be bound by such directives as the Director (Inspection & Quality Control) may give in writing from time to time.

[File No. 5/3/98-EI&EP]
PRABH DAS, Director

मानव संसाधन विकास मंत्रालय

(शिक्षा विभाग)

नई दिल्ली, 10 अगस्त, 1998

का.आ. 1644.—सार्वजनिक परिसर (अनाधिकृत रूप से कब्जा करने वालों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा नीचे दी गई सारणी के कालम (1) में उल्लिखित अधिकारी को भारत सरकार के राजपत्रित अधिकारी के पदनाम के समतुल्य पद होने के नाते उक्त अधिनियम के प्रयोजनार्थ सम्पदा अधिकारी नियुक्त करती है, जो प्रदत्त शक्तियों का प्रयोग करेंगे तथा उक्त सारणी के कालम (2) में सदृश प्रविष्टि में विनिर्दिष्ट सार्वजनिक परिसरों के संबंध में अपने क्षेत्राधिकार की स्थानीय सीमाओं के भीतर उक्त अधिनियम द्वारा अथवा उसके अन्तर्गत सम्पदा अधिकारी को सौंपे गये कर्त्तव्यों को पूरा करेंगे।

अधिकारी का नाम तथा पदनाम	सार्वजनिक परिसरों की श्रेणियां
1	2
रजिस्ट्रार, मौलाना आजाद राष्ट्रीय उर्दू विश्वविद्यालय, हैदराबाद	मौलाना आजाद राष्ट्रीय उर्दू विश्व-विद्यालय के सभी परिसर अथवा इसके द्वारा लीज पर लिये गये सभी परिसर

[सं. एफ. 27-5/98-डैस्क (यू)]

एस. डी. बांगा, डैस्क अधिकारी

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Education)

New Delhi, the 10th August, 1998

S.O. 1644.— In exercise of the powers conferred by section 3 of the the Public Premises (Eviction of unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in Column (1) of the Table below, being an officer equivalent to the rank of gazetted officer of the Government of India, to be estate officer for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on Estate Officer by or under the said Act within the local limits of his jurisdiction in respect of the public premises specified in the corresponding entry in column (2) of the said Table.

Name and Designation of Officer	Categories of public premises
1	2
Registrar, Maulana Azad National Urdu University, Hyderabad.	All premises belonging to or taken on lease by Maulana Azad National Urdu University.

[No. F. 27-5/98-Desk(U)]

S. D. BANGA, Desk Officer

कोयला मंत्रालय

नई दिल्ली, 13 अगस्त, 1998

का.आ. 1645.— केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उपधारा (1) के अधीन जारी भारत सरकार के कोयला मंत्रालय की अधिसूचना सं. का. आ. 411(अ), तारीख 26 मई, 1997 जो भारत के राजपत्र,

असाधारण, भाग II , खंड 3, उपखंड (i) तारीख 26 मई, 1997 में प्रकाशित की गई थी, द्वारा उक्त अधिसूचना से संलग्न अनुसूची में वर्णित परिक्षेत्र की भूमि में, जिसका माप 433.221 हैक्टर (लगभग) या 1070.532 एकड़ (लगभग) है, खनिजों के खनन, खदान बोर करने, उनकी खुदाई और तलाश करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकारों के अर्जन करने के अपने आशय की सूचना दी थी, ।

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है।

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और मध्य प्रदेश सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 433.221 हैक्टर (लगभग) या 1070.532 एकड़ (लगभग) माप वाली भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई और तलाश करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकार अर्जित किये जाने चाहिये।

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि इससे संलग्न अनुसूची में वर्णित 433.221 हैक्टर (लगभग) या 1070.532 एकड़ (लगभग) माप वाली, भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई और तलाश करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकारों को अर्जित किये जाते हैं ।

इस अधिसूचना के अधीन अपने आने वाले क्षेत्र के रेखांक सं. सी–1(ई)/III/एफ एफ आर/642–198 तारीख 22 जनवरी, 1998 वाले रेखांक का निरीक्षण कलैक्टर, बैतूल (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कलकत्ता–700001 के कार्यालय में, या वैस्टर्न, कोलफील्ड्स लि. (राजस्व विभाग) कोल ऐस्टेट, सिविल लाइन्स नागपुर–440001 (महाराष्ट्र) के कार्यालय में किया जा सकता है।

अनुसूची

उमरी ब्लाक

पथलेरा क्षेत्र

जिला बैतूल

(मध्य प्रदेश)

(रेखांक सं० सी-1 (ई) /III/एफ/आर 642-198 तारीख 22 जनवरी 98)

खनन अधिकार :

क्रम सं०	ग्राम का नाम	पटवारी हल्का न०	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	केरिया उमरी	44	बैतूल	बैतूल	433.221	भाग
					कुल क्षेत्र 433.221 हेक्टर (लगभग) या 1070.532 एकड़ (लगभग)	

ग्राम केरिया उमरी में अर्जित किए गए प्लाट सं० :

5 से 17, 18/1–19/2, 19 से 23, 24/1–24/2, 25 से 37, 38/1, 38/2, 38/3, 38/4, 39 से 55, 56/1–56/2, 57 से 74, 75 (भाग), 76 (भाग), 77 (भाग), 83 (भाग), 84 (भाग), 85 से 92, 93/1–93/2, 94 से 108, 109 (भाग), 118 (भाग), 119 (भाग), 120 से 147, 148 (भाग), 159 (भाग), 160 (भाग), 162 (भाग), 163 (भाग), 165 (भाग), 166 (भाग), 167 से 169, 170/1, 170/2, 171 से 173, 174/1–174/2, 175/1–175/2, 176 से 185, 186 (भाग), 187/1–187/2, 188 से 190, 191/1 (भाग) (राजस्व वन), 191/2, 191/4, 191/5, 191/6, 191/7 191/8, 191/9, 191/10, 191/11, 119/12, 191/13, 191/14, 191/15, 191/16, 191/17 (भाग), 191/18 (भाग), 191/19,

सीमा वर्णन :

क–ख–ग : रेखा बिन्दु "क" से आरंभ होती है तथा नदी के दक्षिणी किनारे के साथ-साथ केरिया उमरी ग्राम से होकर जाती है और प्लाट सं० 16, 15, 13, 12, 10, 9, 5, 54, 55 64, 73, 75, 76 की बाहरी सीमा के साथ-साथ जाती है और बिन्दु "ग" पर मिलती है ।

ग–घ : रेखा प्लाट सं० 76, 75, 77, 83 में केरिया उमरी ग्राम से होकर जाती है और बिन्दु "घ" पर मिलती है ।

घ–ङ : प्लाट सं० 83, 84, 109 में केरिया उमरी ग्राम से होकर जाती है और प्लाट सं० 108 की बाहरी सीमा के साथ-साथ जाती है , फिर प्लाट सं० 118, 103, 148, 166, 165, 186, 163, 162, 160, 159 में, तत्पश्चात् प्लाट सं० 191/17, 191/18 में प्लाट सं० 188 की बाहरी सीमा के साथ-साथ फिर प्लाट सं० 191/15, 191/19 की बाहरी सीमा के साथ-साथ इसके पश्चात् प्लाट सं० 191/1 में और बिन्दु "ङ" पर मिलती है ।

ङ–च : रेखा केरिया उमरी और सलेया ग्रामों की सम्मिलित ग्राम सीमा के साथ-साथ जाती है और बिन्दु "च" पर मिलती है ।

च–छ–क : रेखा केरिया उमरी ग्राम और सरकारी वन की सम्मिलित सीमा के साथ-साथ जाती है तथा आरम्भिक बिन्दु "क" पर मिलती है ।

[सं० 43015/20/94-एल०एस० डब्ल्यू०/पी० आर० आई० डब्ल्यू]

प्रेमानन्द दास, निदेशक

MINISTRY OF COAL

New Delhi, the 13th August, 1998

S.O. 1645.—Whereas by the notification of the Government of India in the Ministry of Coal, No. S.O. 411(E), dated the 26th May, 1997, issued under sub-section (1) of Section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act) and published in Part II, Section 3, Sub-section (ii) of the Gazette of India Extraordinary, dated the 26th May, 1997, the Central Government gave notice of its intention to acquire the rights to mine, quarry, bore, dig the search for win, work and carry away minerals in the lands measuring 433.221 hectares (approximately) or 1070.532 acres (approximately) in the locality as described in the schedule appended to that notification;

And whereas the competent authority, in pursuance of Section 8 of the said Act, has made his report to the Central Government;

And whereas the Central Government, after considering the report aforesaid and after consulting the Government of Madhya Pradesh, is satisfied that the rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the lands measuring 433.221 hectares (approximately) or 1070.532 acres (approximately), described in the schedule appended hereto, should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the lands measuring 433.221 hectares (approximately) or 1070.532 acres (approximately), described in the schedule appended hereto, are hereby acquired.

The plan, bearing No. C-1(E)/III/FFR/642-198 dated the 22nd January, 1998, of the area covered by this notification may be inspected in the office of the Collector, Betul (Madhya Pradesh) or in the office of the Coal Controller, 1, Council House Street, Calcutta-700001 or in the office of the Western Coalfields Limited, (Revenue Department), Coal Estate, Civil lines, Nagpur-440001 (Maharashtra).

SCHEDULE

UMRI BLOCK

PATHAKHERA AREA

DISTRICT-BETUL

(MADHYA PRADISH)

(Plan No. C-1 (E)/III/FFR/642-198 dated the 22nd January, 1998).

MINING RIGHTS :

Serial number	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Keria Umri	44	Betul	Betul	433.221	Part
				Total area :	433.221 hectares (approximately) or 1070.532 acres (approximately)	

Plot numbers acquired in village Keria Umri :

5 to 17, 18/1-18/2, 19 to 23, 24/1-24/2, 25 to 37, 38/1, 38/2, 38/3, 38/4, 39 to 55, 56/1-56/2, 57 to 74, 75 part, 76 part, 77 part, 83 part, 84 part, 85 to 92, 93/1-93/2, 94 to 108, 109 part, 118 part, 119 part, 120 to 147, 148 part, 159 part, 160 part, 162 part, 163 part, 165 Part 166 part, 167 to 169, 170/1, 170/2, 171 to 173 174/1-174/2, 175/1, 175/2, 176 to 185, 186 part, 187/1-187/2, 188 to 190, 191/1 part (Rev. Forest), 191/2, 191r4, 191/5, 191/6, 191/7, 191/8, 191/9, 191/10, 191/11, 191/12, 191/13, 191/14, 191/15, 191/16, 191/17 part, 191/18 part, 191/19.

Boundary description :

A—B—C : Line starts from poiot 'A' and passes through village Keria Umri along the southern bank of Tawa River and alo ıg the outer boundary of plot numbers 16, 15, 13, 12, 10, 9, 5, 54, 55, 64, 73, 75, 76 and meets at point 'C'.

C—D : Line passes through village Keria Umri in plot numbers 76, 75, 77, 83, and meets at point 'D'.

D—E : Line passes through village Keria Umri in plot numbers 83, 84, 109 and passes along the outer boundary of plot number 108, then in plot numbers 118, 103 148, 166, 165, 186, 163, 16?, 160, 159, then along the outer boundary of plot number 188 in plot numbers 191/17, 191/18, then along the outer boundary of plot numbers 191/15, 191/19, then in plot number 191/1 and meets at point 'E'.

E—F : Line passes along the common village boundary of villages Keria Umri and Salaiya and meets at point 'F'.

F—G—A : Line passes along the common boundary of village Keria Umri and Government Forest and meets at starting point 'A'.

[No. 43015/20/94-LSW/PRIW]
PREMANAND DAS, Director

श्रम मंत्रालय

नई दिल्ली, 30 जुलाई, 1998

का०आ० 1646 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सदर्न रेलवे त्रिचरापल्ली के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, तमिलनाडु के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-98 को प्राप्त हुआ था ।

[संख्या एल-41012/65/95-आई०आर० (बी-1)]
पी०जे० माईकल, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 30th July, 1998

S.O. 1646.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Tamil Nadu as shown in the Annexure in the industrial dispute between the employers in relation to the management of Southern Railway Trichirapalli and their workman, which was received by the Central Government on 29-7-1998.

[No. L-41012/65/95-IR (B-I)]
P. J MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL TAMIL NADU CHENNAI

Wednesday, the 27th day of May, 1998

PRESENT :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal.

Industrial Dispute No. 57 of 1996

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I. D. Act, 1947 between the Workmen and the Management of Golden Rock Workshop, Southern Railway, Trichy).

BETWEEN

Shri R. Muruganandam,
No. C-37/2, Railway Colony,
Ponmalai, Trichirapalli-620004.

AND

The Workshop Personnel Officer,
Golden Rock Workshop,
Southern Railway,
Trichirapalli-620002.

REFERENCE :

Order No. L-41012/65/95-IR (B-I), Ministry of Labour, dated 22-7-96, Government of India New Delhi.

This dispute coming on for final hearing on Monday, the 9th day of March, 1998, upon perusing the reference, claim, counter statements and all other material papers on

record, and upon hearing the arguments of Miss S. Jothivani and V. Kasthuri, Advocates appearing for the worker and of Thiru M. Munivadin Sheriff, Standing Counsel for respondent management, and this dispute hoving stood over till this day for considerotion, this Tribunal made the following :

AWARD

This reference has been made for adjudication of the following issue :

"Whether the termination of Shri R. Muruganandam, w.e.f. 26-4-90 by the management of Golden Rock Workshop, Southern Railway, Trichirapalli is justified ? If not, to what relief he is entitled ?"

2. The main averments found in the claim statement filed by the petitioner are as follows :

The petitioner was appointed as Khalasi in the year 1977. He was promoted as Khalasi helper in the year 1980 and subsequently promoted as skilled in the year 1985 and was further promoted as Highly Skilled II in the year 1987. The petitioner was rendering services to the entire satisfaction of his superior without any blemish and even for the meritorial servies rendered by him, the petitioner was rewarded in the year 1982 and 1988 by the respondent. The petitioner was an active trade union worker in Golden Rock Railway Workshop and have taken active part in the "Workers Propoganda Committee" constituted for the purpose of exposing the corruption and misappropriation by the higher official among the co-workers and the management. The management was biased towards this petitioner and has started giving troubles, to the petitioner by all means and ways who even challenged the petitioner that he would be removed from service. The petitioner hold to face serious domestic difficulties from the family members, in view of involvement of the petitioner in trade union activities. As such the petitioner who was in a troubled state of mind could not attend to his duties from 5-11-88 to 25-1-89 for a period of 82 days. The petitioner joined duty on 25-1-89 and was attending his duty regularly. The petitioner was issued with an order of suspension vide proceeding No. P.V. 1060/DAR dated 7-2-89 by the respondent on the ground of contemplation of disciplinary proceedings with a condition that the petitioner should not leave the headquarters without prior permission. On the very next day, the petitioner was issued with an order revoking, the order of suspension without prejudicial to the disciplinary action, which was proposed to be taken. The petitioner was served with charge sheet dated 20-10-89, for the unauthorised absence between 5-11-88 to 22-01-89. The petitioner submitted his representation against the charge memo on 23-12-89. On 19-2-90, an enquiry was conducted and the petitioner also offended the enquiry. At the time of enquiry some other third person who is not in connection with the case of the petitioner was also present. The Presenting Officer was not present and the Enquiry Officer himself summoned the petitioner. Due to the presence of a stranger at the time of enquiry, the petitioner could not answer and the Enquiry Officer himself summonded the of two of his witnesses, Enquiry Officer did not consider the same and closed the enquiry and submitted his findings holding that the charges levelled against the petitioner were proved. Based on the findings of the Enquiry Officer, the respondent issued order of removal of petitioner from service, w.e.f. 26-4-90. Petitioner preferred an appeal on 10-5-90 and that appeal was also rejected The petitioner approached Central Administrative Tribunal and by order dated 22-2-91, the Central Administrative Tribunal was pleased to set aside the order of removal from service and directed the respondent to start from the stage of issuing copy of inquiry report. The petitioner was reinstated in servic by an order dated 20-4-91. On 21-4-91 respondent forwarded a copy of enquiry report to the petitioner and called his explanation. The petitioner submitted his explanation on 13-5-91. Again by an order dated 23-5-91 the respondent imposed the same punishment of removal from service. The petitioner's appeal dated 8-7-91 was also dismissed. Thereafter, the petitioner filed an application before the Labour Commissioner, Trichy. Conciliation failed. Respondent has failed to give reasons for imposing highest punishment and as such the impugned order has been issued against the principles of natural justice. Proper enquiry was not conducted giving the petitioner full opportunity to prove his innocence. Enquiry Officer has taken the role of a prosecutor as well as the Judge which is also against the principles of natural justice. Enquiry Officer and disciplinary authority have not considered the circumstances of the petitioner to stay away for 82 days. The petitioner has been singled out from similarly placed persons, who had absented from duty for more than 82 days but have been reinstated in service only with a warning. For e.g. (V) Baskar T. No. 6445/Khalasi, absented from duty in the year 1989-90, R. Manohar, T. No. 3285/Khalasi absented in the year 1989-91 and S. Sundarrajaan, T. No. 316, absented in the year 1990 and all of them were reinstated in service whereas in the case of the petitioner he was imposed with highest punishment of removal from service which is against principles enshrined under Art. 14 and 15-A of the Constitution of India. The punishment imposed on the petitioner is disproportionate to the gravity of the offence. Petitioner prays to set aside order of termination of service and to pass an award for reinstatement with back wages and other benefits.

3. The main averments found in the counter statement filed by the respondent are as follows :

The respondent does not admit the meritorious services of the petitioner and his active part in the Workers Propoganda Committee etc. The allegation that the management was biased towards the petitioner is not true. The averment that the petitioner was in a troubled state of mind, is not true and relevant for the purpose of his absence from duty from 5-11-88 to 25-1-89 for a period of 82 days It was dereliction of duty pure and simple. Enquiry against the petitioner was held strictly in accordance with Railway Service (Discipline and Appeal) Rules, 1968. The allegation that there was a stranger during the enquiry has been invented for the first time in this petition As a result of the enquiry the petitioner was awarded the penalty of removal from service. The respondent complied with direction of the Central Administrative Tribunal in O.A. 585/90 and confirmed the earlier order. As against the said order, the petitioner agitated before the Central Administrative Tribunal in O. A. 536/91 which was also dismissed. The said order becomes final and it restricts the petitioner from further agitation. There was no dispute after the Central Administrative Tribunal disposed the matter. The petitioner has to pay Rs. 59.395 as arrears for the quarters occupied by him The respondent prays to dismiss the claim petition.

4. No witness was examined on both sides. Ex. W-1 to W-20 and Ex. M-1 were marked by consent.

5. The Point for consideration is : Whether the termination of the petitioner w.e.f. 26-4-90 by the respondent is justified ? If not what relief he is entitled to ?"

6. The Point—The petitioner was working in the respondent's workshop, at Golden Rock, Trichy as a highly skilled helper. The petitioner was absent from duty from 5-11-88 to 25-1-89 for a period of 82 days. He joined duty on 25-1-89. On 7-2-89, the respondent suspended the petitioner pending disciplinary proceedings. On the very next day, the order of suspension was revoked. About 10 months later on 20-10-89 the respondent issued memorandum of charges for the unauthorisd absence of the petitioner from 5-11-88 to 25-1-89. The said charge is Ex. W-2. Explanation submitted by the petitioner on 23-12-89 is Ex W-4 wherein he has stated that on 27-1-89 he has informed his higher authority in person as well as by letter the reasons

for his absence. Not satisfied with the explanation given by the petitioner the respondent ordered a domestic enquiry and the enquiry notice is Ex. W-5. On the same day i.e. 19-3-90 on which the enquiry notice was given to the petitioner, enquiry has been conducted in which the enquiry tioner, enquiry has been conducted in which the enquiry has accepted these charges against him during the enquiry. Regarding the absence from 5-11-88 to 22-1-89, the petitioner has stated that there are some reasons for his absence, but he could not express it openly. Once again for the last question, the petitioner has stated that he did not want to give any false reasons for his absence and that he is not in a position to express real reason for his absence. On the same day, the Enquiry Officer has given his findings, holding that the charges against the petitioner are proved. The enquiry proceedings are Ex. W-6, and findings are Ex. W-7. Accepting the findings, the respondent has issued a penalty advice Ex. W-8 for removal of petitioner from service. The petitioner's appeal against punishment imposed on him is Ex. W-9 which was also rejected by order dated 19-7-90 which is Ex. W-10. Medical certificate produced by the petitioner for his absence of 82 days is Ex. W-16. The order rejecting the appeal by the petitioner is Ex. W-18. The petitioner's appeal before the Conciliation Officer is Ex. W-19 and the conciliation failure report is Ex. W-20. After the absence of the petitioner from 5-11-88 to 22-1-89, the petitioner has been allowed to continue in work and about 10 months later, Ex. W-2 charge sheet dated 20-10-89 has been issued to the petitioner. All of a sudden on 19-3-90, Ex. W-5 enquiry notice has been served on the petitioner and enquiry has been conducted against him on the very same day. There is no prior information as to who will be the Enquiry Officer, and who will be the Presenting Officer, and what are the documents that would be marked against the petitioner and who will be the witness against him. On the same day on which Ex. W-5 notice was served on the petitioner, 19-3-90, enquiry has been conducted by the Enquiry Officer by simply asking eight questions to the petitioner. The petitioner has admitted his absence and did not tell the reasons for his absence even though the Enquiry Officer questioned him the reasons twice. Subsequently, in his appeal filed by the petitioner alongwith the appeal petitioner Ex. W-9, the petitioner has enclosed the lawyer's notice dated 10-11-88 issued to him on behalf of his wife. In the Lawyer's notice it is mentioned that the petitioner is engaging himself is social activities and that his wife is without any male help finding it difficult to cope up with needs of the family and taking care of children and has claimed maintenance of Rs. 500 per month. He has also enclosed a copy of his letter said to have been sent to his higher official about his absence. Even if the alleged domestic problem is true, the petitioner ought to have applied for leave to his higher authorities, before absenting himself from duty. Since the petitioner has himself admitted his absence without prior permission, the charge has been proved Neither the petitioner nor the respondent has produced copy of the order passed by Central Administrative Tribunal in O.A. 536/91 and therefore, this Tribunal is not able to find out what is the exact order passed in the above case and under what circumstances.

7. Now we have to see whether the punishment imposed on the petitioner is proportionate to the misconduct alleged against him or excessive and also whether the petitoner has been dicriminated while dealing with other similarly placed workmen for similar misconducts. At the request of the learned counsel for the petitioner. Learned counsel for the respondent has produced several files of disciplinary proceedings taken against certain employees of unauthorised absence. In the claim petition itself, the petitioner has cited the cases of similar employees like V. Bhaskar, T. No. 4445, R. Manohar, T. No. 3235 and S. Sundarraj T. No. 316. A perusal of the files produced by the learned counsel for the respondent would reveal the following facts. 1. In the cases of Ramakrishna Manohar, he had absented from duty from 4-12-89 onwards for 456 days as on 4-3-91. In the enquiry he has admitted the charge. The punishment given to him is withholding of increment for 18 months for his absence from duty from 4-12-89 to 12-3-91. On appeal the punishment has been reduced and the withholding of annual increment was reduced for a period of 6 months. by an order dated 11-10-91. The same Manager on the promotion of R. Manohar from Khalasi helper to Skilled Gr. III/DSL Fitter has further reduced the punishment by withholding annual increment for a period of 4 months only. Thus it could be seen that in the case of R. Manohar who has absented himself for more than 456 days, the punishment was only withholding of next annual increment for a period of 4 months whereas the punishment for the petitioner for 82 days absense is dismissal from service.

8. In the case of A. Tamilarason, T. No. 3236, for his unauthorised absence from 10-9-90 to 8-1-91 for a period of nearly 120 days, the penalty advice as per order dated 25-9-92 was reduction to the next lower post, for a period of 3 years. On appeal, the above penalty was removed and a new penalty of withholding of next issue of set of privilege passes alone was imposed. Again the same person was unauthorisedly absent from duty from 20-5-92 to 15-6-92. On his admission of the unauthorised absence, by order dated 24-11-92, the punishment of withholding of the annual increment for 2 years was imposed as per order dated 24-11-92. On appeal even this punishment was reduced and modified to that of withholding of next issue of one set of privilege pass in his favour.

9. In the case of Sundarraj S. T. No. 316, for his unauthorised absence from 2-3-90 to 23-12-90 totally 297 days, the punishment imposed on him is postponment of annual increment for 3 years.

10. In the case of Bhaskar T No. 4445, Khalasi for his unauthorised absence from 31-3-90 to 12-4-90, the penalty imposed on him was only withholding of annual increment for a period of 6 months.

11. From the particulars given above in the case of Sundarraj who was absent for 292 days, A. Tamilarasan for 120 days and R. Manohar for his absence for 464 days the punishment was not termination from service but withholding of increments only and ultimately on appeal withholding of privilege passes. On the other hand, for unauthorised absence of the petitioner for only 82 days, the punishment imposed on him is removal from service. Therefore, the punishment meted out towards the petitioner shows clear discrimination when compared with the punishment imposed on other employees who had absented themselves for longer periods than the petitioner. In one of the latest judgements of our Hon'ble High Court reported in 1998 MLJ P. 359 M. Rajamanickam Vs. The E. D. Bharat Heavy Electricals Limited, Tiruchirapalli and Anr, our High Court has held as follows :

> "We are of the view that there is no iota of evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. This discrimination writ large on the record and the Court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. Learned counsel for the management failed to explain to us the distinguishing features and therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present applicant suffers from the vice of arbitrariness and Art. 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Art. 14 of the Constitution of India. The Court must accordingly intervene and quash the discriminatory action. Further, we are also not inclined to remit the case to the disciplinary authority or the appellate authority as the case may be, since in our opinion the appellant was subjected to ahostile discrimination in regard to the award of punishment. Therefore, it is still open to us to interfere with the order of punishment on the ground that the penalty imposed on the appellant is hostile discrimination, harsh and disproportionate to the proved misconduct."

In this case also, the respondent management has shown discrimination against this petitioner probably purposefully because of his trade union activities. The respondent has not shown any reason why the petitioner was imposed with the punishment of dismissal while order other employees were let off with minor punishments There are some disputes with regard to the quarters occupied by the petitioner for which he has gave to the Central Administrative Tribunal as well as the District Munsiff Court. The petitioner is liable to pay the rent for the quarters occupied by him till today as if

he was on duty. The rent liable to be paid by the petitioner shall be recovered from the back wages of the petitioner.

In the result, I hold that the termination of Thiru R. Murugonandam. w.e.f. 26-4-90 by the management of Golden Rock Workshop, Southern Railway is not justified and consequently the petitioner is entitled for reinstatement with 50% of back wages and other attendant benefits. Award passed. No costs.

Dated, this the 27th day of May, 1998

S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For both sides :
None.

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W-1/1-4-77—Appointment order issued to petitioner (Xerox copy)

Ex. W-2/11-11-89—Charge sheet order issued to petitioner (Xerox copy)

Ex. W-3/8-12-89—Suspension order issued to petitioner (Xerox copy)

Ex. W-4//23-12-89—Explanation given by petitioner workman (Xerox copy)

Ex. W-5/19-3-90—Intimation letter regarding enquiry sent to petitioner (Xerox copy)

Ex. W-6/19-3-90—Enquiry proceedings (Xerox copy)

Ex. W-7/19-3-90—Enquiry findings (Xerox copy)

Ex. W-8/24-4-90—Penalty advice (Xerox copy)

Ex. W-9/10-5-90—Appeal memorandum submitted by workman (Xerox copy)

Ex. W-10/19-7-90—Reply sent by respondent (Xerox copy)

Ex. W-11/22-2-91—Judgement of CAT in O.A. 585/90 (Xerox copy)

Ex. W-12/30-4-91—Reinstotement order to petitioner (Xerox copy)

Ex. W-13/21-4-91—Explanation letter by the respondent (Xerox copy)

Ex. W-14/13-5-91—Second explanation submitted by the workman (Xerox copy)

Ex. W-15/23-5-91—Second penalty advice (Xerox copy)

Ex. W-16/8-7-91—Explanation given by workman and medical certificate (Xerox copy)

Ex. W-17/2-8-91—Explanation submitted by the workman in person to the respondent (Xerox copy)

Ex. W-18/30-12-91—Removal order of workman (Xerox copy)

Ex. W-19/3-7-93—Application made by the petitioner before conciliation authority (Xerox copy)

Ex. W-20/2-7-94—Conciliation failure report (Xerox copy)

For Respondent-management :

Ex. M-1/ —Xerox copy of Memo filed by the respondent-management before District Munsiff. Trichirapalli.

नई दिल्ली, 30 जुलाई, 1998

का०आ० 1647.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्थ ईस्टर्न रेलवे, लखनऊ के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-98 को प्राप्त हुआ था ।

[संख्या एल-41012/45/95-आई०आर० (बी-I)]

पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 30th July, 1998

S.O. 1647.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of North Eastern Rly., Lucknow and their workman, which was received by the Central Government on 29-7-98.

[No. L-41012/45/95-IR (B.I.)]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR U.P.

Industrial Dispute No. 47 of 1996

In the matter of dispute :

BETWEEN :

Mandal Sachiv,

Purvottar Railway Shramik Sangh,
C/o B. D. Tiwari 96/196 Ganeshganj,
Lucknow. U.P.

AND

Divisional Railway Manager.
N.E.R. Lucknow

AWARD

1. Central Govt. Ministry of Labour, vide Notification No. L-41012/45/95-I.R. B-1 dated 24-4-96, has referred the following dispute for adiudication to this Tribunal :—

Whether the action of the management of North Eastern Railway in imposing punishment of stoppage of 2 increments on Sri Chotey Lal ganeman is just and legal ? If not to what relief the workman is entitled ?

2. The concerned workman Chotey Lal was working as ganeman at Railway Station Lucknow of the opposite party N.E.R. He was issued chargesheet no. SF No. 2 for disappearing from the site without informing mate. After enquiry the misconduct was found proved, hence he was awarded punishment of stoppage of two increments. Feeling aggrieved the concerned workman has raised the instant industrial dispute. In the claim statement it has been alleged that the concerned workman has been awarded punishment by way of stoppage of two increments and denial of one set of family pass. His appeal has been dismissed. In fact he has not committed any misconduct, hence punishment should be set aside.

3. In my opinion from the above claim statement the concerned workman has not made out any case. It is well settled law that when workman is punished on the basis of domestic enquiry and he raises the industrial dispute, first he has to challenge the fairness and proprietory of domestic enquiry. In case he does not do so the question of punishment will be decided keeping in mind legal pleas. In case domestic report is set aside fresh opportunity is given to the management to prove the misconduct before the tribunal and if the misconduct is proved before the tribunal the quantum of punishment is to be looked into.

4. In the instant case workman has not challenged the fairness and proprietory of domestic enquiry, hence it cannot be locked into nothing has been said regarding any

illegality having been committed to the competent authority in award of punishment. Thus in the presence all this I come to the conclusion that the punishment awarded to the concerned workman is justified and he is not entitled or any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 जुलाई, 1998

का०आ० 1648.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक, लखनऊ के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-98 को प्राप्त हुआ था।

[संख्या एल-12012/05/96-आई०आर०डी०/बी०-I]
पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 30th July, 1998

S.O. 1648.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhartiya State Bank, Lucknow and their workman, which was received by the Central Government on 29-7-98.

[No. L-12012/05/96-IR D/B.I.]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR U.P.

Industrial Dispute No. 92 of 1997

In the matter of dispute :

BETWEEN :

Ashok Kumar Saxena son of Lalta Prasad,
C/o. Sri R. R. Shukla 258 Madhinath Road,
Bareilly. U.P.

AND

Mukhya Mahaprabandhak,
Bhartiya State Bank,
Sthaniya Mukhyalaya,
24 M. G. Marg Lucknow.

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-12012/05/96/I.R.D. dated 23-6-97 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of State Bank of India in not giving the preference to Sri Ashok Kumar Saxena Ex-Part time Messenger during the course of employment over his juniors is just fair and legal ? If not, what relief he is entitled to and from what date ?

2. The case of concerned workman Ashok Kumar Saxena is that he has continuously worked as sub-staff from 29-4-86 to 4-8-86 for 89 days at Cantt. Branch Bareilly of the opposite party State Bank of India. Amit Babu and Surendra Kumar Sharma who had worked for 85 days have been taken in service whereas the applicant has been deprived of this benefit on the pretext that he was a part time messenger, hence his number of days has been reduced to half. According to bank in this way his claim was not entertainable according to settlement. It is alleged that this plea of the bank is wrong and his number of days should be treated 89 days and consequently he should be declared to have been duly selected. It has further been alleged that his name has also been shown in the selected list of successful candidates.

3. The opposite party bank has filed reply in which it is alleged that since the concerned workman was a part time messenger his number of days have been reduced to half. Surendra Kumar and Amit Babu were temporary whole toime workers hence there cannot be any parity.

4. There is copy of settlement dated 17-11-87 arrived at between S.B.I. and All India State Bank of India Staff Federation. According to this settlement ex-temporary employee of the bank were categorised as ABC. For category A the workman ought to have completed 240 days in a year. For category B the workman ought to have completed 270 days in 36 calender months. Category C comprised of those persons who have completed 30 days of temporary employment in a calender year and minimum 70 days temporary service in a continuous block of 36 calender months. Para 2 of this settlement further says that permanent part time employees were also eligible.

5. There is no dispute that the concerned workman was a temporary part time messenger, as such he was not entitled for the benefit of this agreement at all. Hence, I am of the view that in view of above interpretation the concerned workman was not eligible for appointment in terms of above settlement.

6. Accordingly my award is that the action of the management in not giving preference to the concerned workman to his juniors is justified and as such the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 जुलाई, 1998

का०आ० 1649.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कानपुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-98 को प्राप्त हुआ था।

[संख्या एल-41012/69/90-आई०आर डी०यू०/बी-I]
पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 30th July, 1998

S.O. 1649.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Allahabad and their workman, which was received by the Central Government on 29-7-98

[No. L-41012/69/90-IRDU/B-I]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR U.P.

Industrial Dispute No. 60 of 1991

In the matter of dispute :

BETWEEN :

Zonal Working President,
U.R.K.U. Roshan Bajaj Lane,
Ganesh Ganj, Lucknow.

AND

Divisional Railway Manager,
D.R.M. Office Allahabad.

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-41012/69/90-I.R. DU dated 14-4-91 has referred the following dispute for adjudication to this Tribunal :—

Whether the action of Sr. Divisional Commercial Supdt., Northern Railway, Allahabad is justified in dismissing services of Smt. Urmila Verma, Lady Ticket Collector w.e.f. 17-7-82 ? If not, what relief of the workman concerned is entitled to and from what date ?

2. There is no dispute about the fact that concerned worklady Smt. Urmila Verma was working as Ticket collector at Allahabad Railway Station of the opposite party Northern Railway on 16-10-81 when she was placed under suspension. It wos followed by chargesheet dated 20-10-81 which runs as under :—

That the said Urmila Verma lady Ticket Collector, Allahabad failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of Railway Servant inasmuch as she alongwith two other ladies occupied delux retiring room at Allahabad Junction Station in the night of 14/15-10-81 in an unauthorised manner as detected during the course of surprise check at about 4.30 a.m. on 15-10-81 thereby contravening Rule No. 3(i)(ii) and (iii) of the Railway services (Conduct) Rules 1966.

One G. P. Sahu Assistant Commercial Suptd. was appointed enquiry officer. After completing enquiry, the enquiry officer submitted his report dated nil. agreeing with this report, the disciplinary authority passed order of dismissal on 17-7-82 appeal filed against this order was dismissed on 21-3-84. Thereafter feeling aggrieved the concerned worklady has raised the instant industrial dispute.

The case of the applicant is that as she had refused to meet the illegal demand of one J. N. Malviya, Assistant Commercial Suptd. posted at Allahabad she was issued wrong charge-heet based on cooked up facts. In fact the chargesheet was issued by Divisional Commercial Suptd. was illegal as he had no authority to issue the same. Further no opportunity of defence was given by the enquiry officer. lastly it was alleged that the copy enquiry report was given before passing dismissal order.

3. The opposite party railway has filed reply maintaining that Divisional Commercial Supdt. had right to issued chargesheet. In fact the concerned worklady did not participate in the enquiry hence the enquiry proceeded exparte. If the concerned worklady did not participate in enquiry she had to thank herself and it cannot be said that no opportunity to defend was given.

4. On the pleadings of the parties preliminary issue regarding fairness and proprietory of the domestic enquiry was framed. Vide finding dated 3-3-98 it was held that the enquiry was fairly and properly held. Thereafter, the case was listed for arguments on quantum of punishment. One such last date was 7-7-98 still no one turned up on behalf of the concerned worklady to place arguments regarding proportionality of punishment before this Tribunal.

5. In the absence of any argument and further finding that misconduct committed by the concerned worklady is so grave for which dismissal could have been passed. It is not shockingly disproportionate to misconduct. Hence it does not calls for interference.

6. Accordingly my award is that dismissal of the concerned workman is not bad. Consequently she is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 30 जुलाई, 1998

का० आ० 1650.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईटेग्रल कोच फैक्ट्री, मद्रास के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, तमिलनाडु के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-98 को प्राप्त हुआ था ।

[संख्या एल-41012/29/92-आई०आर(डी.यू)/बी-I]

पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 30th July, 1998

S.O. 1650.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Tamil Nadu as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Integral Coach Factory, Madras and their workman, which was received by the Central Government on 29-7-98.

[No. L-41012/29/92-IR(DU)/B.I.]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, CHENNAI

Tuesday, the 26th day of May 1998

Present :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 72 OF 1993

(In the matter of the dispute for adjudication under Sec. 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Integral Coach Factory, Madras).

BETWEEN

Shri K. Bakthavatsalam,
No. 132, Paper Mills Road,
Peravellore, Madras-600 082.

AND

The General Manager,
Integral Coach Factory,
Madras-600 038.

REFERENCE :

Order No. L-41012|29|92-IR(DU), Ministry of Labour, dated 21-7-93, Govt. of India, New Delhi.

This dispute coming on for final hearing on Friday, the 13th day of March 1998, and upon perusing the reference, claim and counter statements and all other material papers on record, upon hearing the arguments of Tvl. G. Justin and V. B. Vincent, Advocates appearing for the petitioner, and Thiru G. Kalarnasundaram, Advocate appearing for the respondent and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made by the Govt. of India, for adjudication of the following issues :

"Whether the management of Integral Coach Factory, Madras is justified in removing Shri K. Bhakthavatsalam from service w.e.f. 10-1-85 ? If not, what relief the workman concerned is entitled to ?"

2. The main averments found in the claim statement filed by the petitioner are as follows : The petitioner was appointed as Sanitary Cleaner by the Deputy Chief Personnel Officer, by an order dated 18-8-79. His appointment was a regular appointment done after employment notice and selection. Certificate verifications were also done by the Deputy Chief Personnel Officer and the intimation for certificate verification was issued by him in his letter dated 19-5-78. The petitioner was issued with a charge memo dated 19-4-1984 stating that the petitioner at the time of his appointment, produced a false record sheet indicating that he has studied in District Board Elementary School, Odappai whereas he has not studied in that school or any other school, that the petitioner has falsely stated that he has studied upto 5th standard and thus by act of misrepresentation, failed to maintain absolute, integrity and acted in a manner unbecoming of railway servant. The petitioner denied the above charges and hence respondent conducted a domestic enquiry. In the domestic enquiry, the petitioner was cross-examined by the Enquiry Officer who relied upon the statements made to Vigilance officer by the petitioner. A copy of the document and statement recorded was not given to the petitioner. Therefore, enquiry was conducted against the principles of natural justice. Enquiry officer gave a finding dated 18-4-84 holding that the petitioner was guilty of the charges. Thereafter, the Deputy Controller of Stores by order dated 7-1-85, removed the petitioner from service w.e.f. 10-1-85. The order of removal is bad in law since it was not passed by the appointing authority i.e. the Deputy Chief Personnel Officer. The Deputy Controller of Stores who is a lower authority than the Deputy Chief Personnel Officer has no authority or power to remove the petitioner from service. Against the order of removal the petitioner preferred an appeal to the Appellate Authority who rejected the appeal by order dated 2-6-86. Thereafter the petitioner preferred a review before the General Manager on 30-3-87 who also rejected the same. Both the Appellate Authority and the Reviewing Authority have not passed speaking order and hence the same has to be quashed. The charge memo dated 19-4-84 itself cannot be issued against the petitioner after lapse of seven years i.e., after verification of certificates by the committee at the time of appointment of the petitioner. Enquiry was conducted in gross violation of Railway Servants (Discipline & Appeal) Rules, particularly Rules 17, 19 and 21 hence enquiry is vitiated and the said finding of the enquiry cannot be the basis for passing the order of removal. The findings of the enquiry officer is perverse because there is no material evidence on record to establish the charge of the alleged production of false record sheet. The alleged admission of the petitioner was obtained by false hopes of giving lesser punishment and hence the said admission is not valid. The copy of the enquiry proceedings was given to the petitioner only alongwith penalty advice dt. 7-1-85 and therefore violative of Art 311 of Constitution of India. Non employment of the petitioner is not for a justifiable cause. The penalty imposed is too severe and hence petitioner prays to invoke Sec. 11A of the I.D. Act. Petitioner prays to pass an award for reinstatement of petitioner in service with all consequential benefits including continuity of service.

3. The main averments found in the counter statement filed by the respondent are as follows : The petitioner was appointed as a Sanitary Cleaner in the ICF in the pay scale of Rs. 196-232 w.e.f. 26-9-79 and he was appointed by the Welfare Officer|Shell, who is an Assistant Officer. Office order dt. 8-10-79 would show that he was appointed by the Assistant Officer. It came to light on investigation that the School Certificate which was produced by the petitioner at the time of appointment was a bogus one. The petitioner was charge sheeted for securing appointment on production of false certificate and misrepresentation of material fact. The petitioner denied the charge and enquiry was conducted in respect of the charge and during the course of enquiry, the petitioner admitted that he produced the bogus certificate with a view to secure appointment in the Integral Coach Factory. The Inquiry Officer after considering the evidence on record found that the petitioner is guilty of the charge and thereafter the Disciplinary Authority accepting the findings of the Inquiry Officer ordered removal of the petitioner from service. Thereafter the petitioner filed appeal before the Appellate Authority who also dismissed the appeal. It is not in dispute that the petitioner at the time of appointment produced false school certificate which led to the appointment. Subsequent investigation revealed that the certificate was a bogus one and in fact in the course of the enquiry the petitioner himself admitted that the certificate was bogus. Having obtained appointment on misrepresentation of facts and on production of bogus certificate it is no longer open to the petitioner to state that the order of removal passed by the authority is invalid. The petitioner was appointed by Office order No. PB|G|751 dt. 8-10-79 and the order of appointment was issued by the Welfare Officer|Shell, who is an Assistant Officer of the ICF. The petitioner was removed from service by the District Controller of Stores|Shell who is higher

in rank than that of the Appointing Authority. Therefore, the order of removal is not in violation of the constitutional provisions or any of the Statutory Rules. The appointment order is dt. 8-10-79 and he was appointed by the Welfare Officer|Shell, who is an Assistant Officer. The allegation that the certificate on verification was also done by the Dy. Chief Personnel Officer and intimation of certificate of verification was issued by the Dy. Chief Personnel Officer in his letter dt. 19-5-78 is again incorrect. The petitioner was not examined in an illegal manner. It is not correct that the Inquiry Officer did not follow the Rules. The enquiry was conducted in accordance with Rules. There was no Presenting Officer appointed on behalf of the Department and therefore, the Inquiry Officer himself put questions to the petitioner. It is not correct that the copy of the document and statements recorded was no given to the petitioner. The charges were sought to be proved only by the following documents. 1. Application form submitted by the petitioner for appointment. 2. Copy of the record sheet purported to have been issued by H.M./P.U. Higher Ele. School, Odappai. 3. Copy of letter dated 29-12-1983 of H.M./P.U. Higher Ele. School, Odappai. 4. Statement of Shri K. Bhakthavatsalam dated 6-1-1984. Copies of all the documents have been supplied to the petitioner alongwith charge-memo. No departmental witnesses were cited and examined in the enquiry. The questions put by Inquiry Officer are only in the nature of Examination-in-chief. It is not correct to state that the enquiry was conducted against the principles of natural justice. It will be pertinent to note that the petitioner himself accepted the charge during the enquiry while replying to question numbers 8, 9, 10, 11, 12, 14 and 17 and admitted to the Inquiry Officer that he was forced to produce bogus certificate with a view to secure appointment in I.C.F. The petitioner also admitted in answer to the question of the Inquiry Officer that he was not forced by the Vigilance Officer for recording a statement which was given voluntarily. It is denied that the order of the Appellate Authority is a non-speaking order. The Appellate Authority has passed an order in accordance with Rules. Apart from the statutory appeal and revision there is no obligation on the part of the Department to consider any Review petition in as much as the Revision petition submitted on 11-3-1986 has been disposed off by the Controller of Stores. The order of the General Manager refusing to interfere with the punishment cannot be challenged in these proceedings. The petitioner was appointed on 26-9-1979 and the charge sheet was dated 19-4-1984. Therefore in the normal course, the verification was made with reference to the fact whether the certificate produced is genuine one or not and after it was found that the certificate produced is bogus one, the Departmental proceeding were initiated. There has been no undue lapse or undue delay on the part of the Department in issuing the charge sheet and in any event as the charge sheet was issued only after the investigation, it cannot be said that the charge sheet is in violation of the principles of natural justice or Rules. No vigilance report has been relied upon in the Departmental enquiry. The documents relied upon have been supplied to the petitioner. The charge has been proved based on his own depositions before the Inquiry Officer. It is not correct that the admission of the petitioner of the charge was obtained by false hope of giving a lesser punishment. There has been no false hope given by the department nor any indication given to the petitioner that if he admitted the charge, he would be given lesser punishment. There is no obligation on the part of the department to issue any second show cause notice and the Rules provide for issue of the report of the Inquiry Officer only alongwith the penalty advice and there is no violation of the Rules or any of the provisions of constitution in this behalf. The petitioner is not entitled to reinstatement.

4. The petitioner examined himself as WW-1 and Exs. W-1 to W-7 were marked. No witness was examined on behalf of the respondent management and Ex. M-1 alone was marked.

5. The Point for consideration is : Whether the management of I.C.F. is justified in removing Shri K. Bhakthavatsalam, from service w.e.f. 10-1-1985 ? If not, to what relief the workman concerned is entitled to ?"

6. The Point : The petitioner workman was appointed as a Santiary Cleaner as per the offer of appointment Ex. W-2 dated 18-8-1979. The letter of the Deputy Chief Personnel Officer for verification of certificates and personal interview is Ex. W-1. On 19-4-1984, the respondent issued a charge sheet Ex. W-3 wherein the petitioner was charged as follows :—

> That the said Shri Bhakthavatsalam, K. Khalasi, Emp. No. 60890 at the time of his appointment in ICF in September, 1979 produced a false "Record Sheet" indicating that he has studied in Dt. Ed. Elementary School, Odappai, whereas he has not studied in that school or any other school. Shri K. Bakthavatsalam has also falsely stated that he has studied upto 5th std. from 15-7-1954 to 10-6-1959. Shri K. Baktavatsalam, by his above acts misrepresented the material facts to the Administration and failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant thereby violating Rules 3.1 (i) and 3.1 (ii) of the Railway Services (Conduct) Rules, 1966."

The petitioner has not sent any reply for the above mentioned charge. The domestic enquiry was ordered wherein enquiry officer enquired the petitioner on 27-9-1984. During the enquiry, when the officer put simple questions the petitioner admitted that he is aware of the charge that he did not study in any school, that for getting any employment, he approached the said school and got a certificate with the help of his uncle Thiru Kannan, that there was no force while the Vigilance recorded his statement, that he gave the statement voluntarily and also admitted that he produced a false certificate. Enquiry proceedings are Ex. W-4. Based on the admissions during the enquiry, Enquiry Officer gave his finding Ex. W-5 holding that the charges against the petitioner are proved. The findings are Ex. W-5. Accepting the said findings Deputy Controller of

Stores has issued final orders removing the petitioner from service. Final order is Ex. W-6. The order on the mercy petition/revision petition by the petitioner passed by the General Manager is Ex. W-7.

7. Apart from the petitioner's admission in the domestic enquiry, the petitioner has admitted during the cross-examination that alongwith the charge memo, he was given copies of the statements and documents relied upon by the department. He has also admitted in the cross-examination that he admitted during enquiry that through his uncle Kannappa Naidu he got a school certificate for the purpose of getting a job If the petitioner has really studied upto 5th Standard, he should be able to atleast read. During the course of his evidence, when the typed version of the evidence was given to him and asked to read he was not able to read even a single word. This would clearly show that the petitioner has not studied any class leave alone 5th Standard. He has learnt only to sign his name. The admission made by the petitioner before the Vigilance Officer and the Enquiry Officer cannot be said to be under influence or coercion. He has clearly admitted before the Enquiry Officer that his statement before the Vigilance Officer is voluntary. The petitioner has not taken any effort to prove that he has studied upto 5th Standard in Odappai Board Elementary School or any other school. On the other hand he has admitted that he has produced a false certificate. Even before this Court, he was not able to read a single word in Tamil. Therefore, it has been proved beyond all reasonable doubts, that the petitioner has produced a false certificate.

8. The next contention of the petitioner is that the appointment order has been issued by the Deputy Chief Personnel Officer, whereas termination order has been passed by the District Controller of Stores, who is said to be a lower authority than the Deputy Chief Personnel Officer, and therefore termination order is invalid. A perusal of Ex. M-1 would show that the appointment has been made by the Welfare Officer of the shell whereas the termination order has been issued by the District Controller of Stores who is an authority higher than the appointing authority. Therefore, the contention of the petitioner that the authority who issued termination order is in lower rank than the authority who issued appointment order is also not correct.

In the result, award passed dismissing the claim of the petitioner. No costs.

Dated, this the 26th day of May, 1998.

S. ASHOK KUMAR, Industrial Tribunal.

WITNESSES EXAMINED

For Petitioner-workman :

W. W. 1 : Thiru K. Bakthavatsalam.

For Respondent-management : Nil.

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W-1/19-5-78 : Letter to petitioner by Deputy Chief Personnel Officer for certificate (xerox).

W-2/18-8-79 : Appointment order (xerox).

W-3/19-4-84 : Memo issued by the Department to the petitioner (xerox).

W-4/27-9-84 : Enquiry Proceedings (xerox).

W-5/8-11-84 : Findings of the Enquiry Officer (xerox).

W-6/7-1-85 : Penalty Advice (xerox copy).

W-7/2-6-86 : Appellate order.

For Respondent-management :

Ex. M-1/8-10-79 : Appointment order given to petitioner (xerox).

नई दिल्ली, 31 जुलाई, 1998

का.आ. 1651.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-7-98 को प्राप्त हुआ था।

[संख्या एल-22012/547/97-आई०आर(सी०-II)]

लौली माऊ, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1651.—In pursuonce of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. S.C.C. Ltd., and their workman; which was received by the Central Government on 29-7-98.

[No. L-22012/547/97-IR (C-II)]

LOWLI MAO, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-II, HYDERABAD

PRESENT :

Sri G. Bhoopathi Reddy, B.A., LL.B., Chairman

Dated, 22 June, 1998

I.D. No. 14 of 1997

BETWEEN :

Sri B. Ganga Ram,
Central Vice President,
SCW Union, (AITUC),
C/o. Makdhoom Bhawan,
Himayathnagar,
Hyderabad. Petitioner.

AND

The General Manager,
M/s. S.C.C.L.,
Kothagudem. Respondent.

APPEARANCES :

Party—in person.

Sri V. Hariharan, representative—for Respondent.

AWARD

This is Central I.D. referred by Government under Section 10(1)(d)(2A) of I.D. Act to the Court to settle the dispt for adjudication whether the action of management of Ms. SCCL in appointed in the dependent of the employees to guide in service etc. as Clerk Gr. II by ignoring the promotion to S. B. Lingaiah, Clerk Gr-II on regular basis. Whether the action of management is legal and justified. If not to what relief to workman concern.

After this dispute was referred to this Court. The Vice President, S.C. Workers Union filed a Claim Statement. It is submitted that written test and internal assessment test for clerical Gr. II test held on 16-2-1992 and a list of qualified candidates and a panel of selection of candidates was finalised on 15-4-1992 on basis of merit. But the management of ignored merit qualified candidates given promotion and agreement is violated. The management SCCL declared that there are 52 vacancies of Clerk Gr-II and 52 candidates from panel were promoted as Clerk Gr-II. Out of the 52 candidates 48 persons were taken office orders and joined their duties and 4 candidates refused their accept the promotion. Since there were transferred to far of places. Thus 4 vacancies were arisen. The Management are to have promoted 4 candidates is a No. 52 to 56 on the basis of rank in the panel of qualified candidates. The management adopted for wrongful unjustified procedures appointed 4 unjustified candidates from the dependents of the workers died in services or medically made unfit and great unjustice is done to the petitioner. The Petitioner No. S. No. 54. It is submitted for the dependents of the workers there is a quite different procedure laid down for the national coal wage agreement and dependents should be appointed over and above the requirements. The petitioner are to have observed as Clerk Gr. II in the declared vacancies. Of the 52 is effected then in 1992. The petitioner prayed to consider over this sympathitically to pass an award to give promotion Gr. II Clerk w.e.f. 1st August, 1992 for other on far with other candidates promoted the other qualified candidates.

Respondent filed a counter alleging that the allegations in the Claim Statement is false. The reference itself is bad. It is submitted that the appointments that are made on compotionary ground cannot be challenged by the regular workers. In the matter of appointments promotions the posts do not interefere considering that those functions are purely managerial in nature. The petitioner Union is a member of JBCCI as per the Notional Coal WageAgreement this is now in force the respondent has to provide employment for workmen who has been declared medically unfit. According to Clause 0.4. NCWA which is in operation which is in mandatory to provide employment dependent employees. The petitioner union being a party to the NCWA is not entitled to raise any dispute which would amount to pertaining or stopping the implementation NCWA It is submitted in respect of filling 4 vacancies of Clerk Gr. II who are members of JBCCI and the respondent are arive memorandum of settlement on 17-9-92 as per the item 3 are the said terms of the memorandum of settlement it was agreed that the existing vacancies filled up by conducting separate test for internal candidates that the selected candidates will confirm only after they apply typewriting qualification in the addition to the degree. The panel valid for one calender year. Out of the 52 candidates 4 did not report for duty and join as clerk. The 4 vacancies filled with dependents and ex-employees. The petitioner filed W.P. No. 20132/93 in the R. C. the said writ was withdrawn by him. The respondent prayed to reject the reference after passing the Nil award.

The point for determination in reference arises whether the action of the management MSSCCL in appointing the dependent of the employees who died in service as clerk in GR II by ignoring the promotion of petitioner is legal. If so what relief the petitioner is entitled to ?

The petitioner contended that he ought to have promoted Clerk GR. II instead of appointed the dependent employees who died in the service in GR. II. The respondent resisted the plea of the petitioner the action taken by the management for appointing the dependent employees as Gr. II employees is valid. The respective submissions made by the petitioner and the respondent management are concerned the petitioner herein made representation to the respondent. But he is qualified candidates in written test in the merit list No. 54 he ought to have promoted as Gr. II Clerk. But the management has not considered his representation. The petitioner has filed list of the qualified test held on 16-2-92 for the post of Gr. II Clerks on perusal of the test list discloses that the petitioner merit rank is 54. There is no dispute by the respondent management with regard to the merit list filed by the petitioner. Apart from this it is an admitted case of the respondent there are 52 vacancies of Gr. II Clerks. Out of the 52 vacancies 48 employees were joined in service and 4 of the qualified candidates did not report for the duty. The 4 vacancies with dependents of ex-employees appointed. The petitioner contended that the ignoring the qualified candidates appoint in the 4 vacancies with the dependents of the ex-employees is illegal. The respondent submitted that as per the National Coal wage agreement the respondent has provided for employment to the 4 dependents of employees who died in the service. To substantiate in the claim of the respondent has filed memorandum of settlement dated 17-4-1991 between the management M/s. SCCL and the 4 Major unions before RLC filed The said memorandum were filed on 28-4-91. There is no doubt on the perusal of the said memorandum of settlement 4 major unions including the petitioner union has signed the said settlement. The said settlement in respect appointment of deceased employees. The said settlement is not binding on the petitioner in respect to fill up the 4 vacancies then the 4 employees failed to join the duty the management ought to have promoted the other qualified candidates instead of the appointing the dependent deceased employees in the Cat II Clerks. There is no doubt the petitioner hearing filed a writ petition W.P. No. 20132/93 which was withdrawn by the petitioner.

The petitioner contended that the management has given a commitment before the High Court that the existing the future vacancies will be filled up by the candidates empannelled in Feb. 1992. The respondent management violated it soon commitment given before the H. C. In those circumstances the W.P. withdrawn by the petitioner. The submission made by the petitioner is not sustainable on the other hand the W.P. withdrawn by the petitioner. The W.P. is no way concern with regard to the deciding this industrial dispute referred by the Central Government. The declared 4 vacancies should have filled up out of the panel of the condidates on the basis of the merit. When the 4 vacancies are arisen due to non joining of 4 qualified candidates the other qualifying candidates ought to have appointed. The petitioner merit list No 54 was qualified in written test and interview assessment The management ought to have promoted him instead of 4 vacancies filled up by the dependent deceased. In support of the petitioner claim the petitioner relied Gujarat State Dy. Executive Engineers Association and State and others 1994 to Labour Law Notes Supreme Court Page 403. It was held a waiting list prepared in service matter by competent authority and list of eligible and qualified candidates who in order of merit or below the last selected candidates a candidate in the waiting list in the order of merit as a right to claim. he may be appointed in the selected candidates, thus not joined The principle laid down the case can be applied in our present case is concerned. In our present case is concern there are 52 vacancies of Gr. II post 52 candidates are qualified on merit list only 48 were promoted and 4 candidates did not report for duty those 4 vacancies are directly appointed by the management deceased employees quota. The appointment is illegal the petitioner is the qualified candidate he ought to have promoted ignoring of petitioners claim the management has appointed fresh candidate More over the petitioner also made a representation before the

management even though the management are not considered his representation.

In support of the petitioner claim the petitioner has relied 1997 (1) Labour Law notes Allahabad High Court Page 639 where in it was held that the selection candidates on merit to be given promotion for the preference instead of directly appointing the dependent deceased employees. The appointment of dependent is quite different that of the qualified candidates promoting Gr. II Clerk post are arisen. The respondent submits that rule of providing with the selecting list for promotion is valid for one year and which cannot be extended. The submission made by the respondent is not sustainable in our present cases concern when there are 52 vacancies on the basis of the selection list are to have appointed from the 4 candidates refusing promotion on merit list the remaining merit list candidates are to have promoted instead of directly appointing the deceased employees children. There was a discrimination on the part of the respondent refusing promotion for the qualified candidates and the petitioner merit list No. 54 the management ought to have promoted him. The respondent submits that the other employees of the respondent management filed a Writ Petitions W.P. No. 9904, 13510, 5740 of 1990 and 1464/91, 13790/91, 13791/91, 3255/92, 4692/92, W.P. No. 2871/91 the said writ petitions were dismissed the reliefs sought in the said writ petitions and the relief sought in the present I.D. is one in the same the I.D. may be dismissed. The High Court order copy dated 18-8-92 filed. On perusal of the said writ petition the reliefs was confirmation absorbing them the Gr. II Clerk in the respondent management. The writ petitioner are not qualified candidates they are not graduates and they are not empanelled in the merit list and they are not qualified for absorption. The writ petitions were dismissed. Whereas in our present case is concern the petitioner were disqualified candidates he ought to have promoted as a Gr. II Clerk. The management held test on 16-2-92 for promoting the grade II Clerk in the test petitioner rank was 54. The petitioner made representation to the management regarding his promotion while he was working as a acting Clerk Gr. II and even after deceased employees were appointed Gr. II Clerk posts but the management has not considered.

The respondent management has committed illegality by appointed direct recruit Gr. II Clerks deceased employees. The reference sent by the Government is answered that the respondent is directed to promote petitioner as a Gr. II Clerk by giving a seniority over the 4 direct recruited candidates but the petitioner is not entitled monetary benefits. The respondent has directed to promote him as a Gr. II Clerk. The award is sent to the Government. The award shall be enforceable on expiry of 30 days after the publication of the award by the Government as provided under section 17-A of the I.D. Act.

Dictated to the Typist corrected by me and given under my hand and the Seal of this Tribunal on this the 22nd day of June, 1998.

G. BHOOPATHI REDDY, Chairman

APPENDIX OF EVIDENCE

No oral or documentary evidence has been adduced on either side.

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1652 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुन्दरगढ़ माईनिंग लेबर कोन्ट्रेक्टूर को०ओ० सोसाईटी लि० के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध मे निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राऊरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[संख्या एल-29012/31/88-डी-III (बी)]

बी०एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1652.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sundergarh Mining Labour Contractor Co-op. Society Ltd., and their workman, which was received by the Central Government on 31-7-98.

[No. L-29012/31/88-D-III (B)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA
Industrial Dispute Case No. 16/97(2/92)(C)

Dated, the 18th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN .

The Secretary,
Sundergarh Mining Labour,
Contractor Co-op. Society Ltd.,
Purnapani. .. Ist party.

AND

Their workman represented,
through North Orissa Workers',
Union, Rourkela-12. .. IInd party.

APPEARANCES :

For the Ist party.—Secretary, S.M.L.C. Co. Op. Society

For the IInd party - Sri B. S. Pati, General Secretary.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 have referred the following disputes for adjudication vide No. L-29012/31/88-DIII (B) dated 28-1-92.

"Whether the action of the management of Sundergarh Mining Labour Contract Co-Operative Society Ltd. contractor of PLDQ, SAIL in terminating the services of Sri Ajit Khadia, Wagon Loader w.e.f. 16-2-87 is lawful and justified ? If not, to what relief is the workman entitled ?".

2. The case of the 2nd party workman is that he worked as a Wagon Loader under the Ist party management from November, 1978 to 15th February, 1987, whereafter the Ist party-management refused him work verbally without complying with the provision as laid down under section 25-F of the I.D Act. It is the further case of the 2nd party workman that the job of wagon loader is perinnial in nature and that he is not in gainful employment since the termination of his service. nder these grounds the prays to be reinstated in service with full back wages and all other consequential benefits

3. As against this the Ist party-management contended that the 2nd party workman was not engaged as a wagon loader under it from November, 1978 to 15th February, 1987.

He alongwith others was engaged as casual labour for a period of 30 days from 29-10-86 and for a further period of 30 days from 17-1-87 for miscellaneous works like repair and maintenance of road etc. only.

4. It is the further case of the 1st party Society that it does not have its own mine. It is also not a holder of mining lease. The work of raising, loading and transporting of lime stone from the mine of Rourkela Steel Plant at Purnapani Limestone and Dolomite Quarries is given to the 1st party society on contract basis periodically by Rourkela Steel Plant on the expiry of the contract the 1st party society does not have the right to work in that mine. Once a contract was terminated on 25-7-83. Again another contract expired on 7-8-86. On both the occasions all the workmen employed under the 1st party were retrenched after giving 90 days notice. So the 2nd party workman has no right to work in the Mine at Purnapani.

5. Under all these grounds the 1st party-management prays to reject the prayer of the 2nd party workman.

6. On the basis of above pleadings of the parties the following issues were framed :

I. If the action of the management of Sundergarh Mining Labour Contract Co-operative Society Ltd. Contractor at PTDO, SAIL in terminating the services of Sri Ajit Khadia Wagon loader w.e.f. 16-2-87 is lawful and justified ?

II. To what other relief the workman is entitled to ?

7. To prove its case the 2nd party workmen examined two witnesses including him WW. No. 1 is the 2nd party workman himself and WW. No. 2 is a supervisor of the 1st party. The 1st party management preferred to examine its manager only.

8. Issue No. 1.—Even a casual worker is a workman as defined under section 2(s) of the I.D. Act. So the 2nd party worker is a workman. The learned Authorised representative of the 2nd party submitted that without complying with the provision of section 25-F of the I.D. Act the 1st party-management terminated the service of the 2nd party workman which is illegal. Admittedly the 1st party-management did not comply with the provision u/s. 25-F of the I.D. Act. while terminating the service of the 2nd party-workman. Section 25-F of the I.D. Act. postulates three conditions to be fulfilled by an employer for effecting a valid retrenchment, namely :—

(i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;

(ii) Payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(iii) notice to the appropriate Govt. in the prescribed manner.

9 It is the well settled position of law that the fulfilment of the first two requirements is mandatory to effect a valid retrenchment. But as required u/s. 25-F of the I.D. Act., the workman must prove that he was in continuous service for not less than one year under the employer continuous service has been defined under section 25-B of the I.D. Act. It reads as follows :—

(1) a workman shall be said to be in continuous service for a period if he is for that period in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer :—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than :

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred any forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than :—

(i) ninety-five days, in the case of workman employed below ground in a miue; and

(ii) one hundred and twenty days, in any other case

Explanation".... ...."

Burden lies with the workman to prove that he worked under the employer uninterruptedly for a period of one year. As per the definition of 25-B (1) of the I.D. Act, cessation of work due to the following grounds shall be included in continuous service :

(a) Sickness, (b) authorised leave, (c) accident, (d) a strike which is not illegal, (e) a lock-out and (f) a cessation of work that is not due to any fault on the part of the workman.

10. If the workman failed to prove that he worked under the employer for a period of one year uninterruptedly it would suffice to attract the provision of section 25-F of the I.D. Act if he can prove that he has actually worked for 190 days if he is employed below ground in a mine or for 240 days in any other case within a span of one year preceding his termination. In counting 190 or 240 days the days as explained in the explanation to clause 2 of section 25-B of the I.D. Act, would also be taken into consideration.

11. Keeping these legal aspects in view, now it would be decided whether the 1st party workman worked under the 2nd party for a continuous period of one year. so as to attract the provision of section 25-F of the I.D. Act. It is not the case of the 2nd party workman that he was working below ground in a mine. It transpires from the evidence of WW. No. 1 (2nd party workman) that he joined under the 1st party as a wagon loader in the year 1978 and continued to work as such upto February. 87, Whereafter his service was terminated. During Cross Examination this witness admitted that as there was no work he sat idle from 25-7-83 to 7-8-83 and from 8-8-86 to 20-8-86. WW No. 1 denied the suggestion of the 1st party that he worked under the 1st party only from 19-10-86 to 28-11-86. On perusal of the evidence of WW No. 2 it is found that the 2nd party workman worked under the 1st party as a mazdoor for three years which is contradictory to the evidence of WW. No 1 It is further found from the evidence of WW. No. 2 that as per the direction of the 1st party-management he asked the 2nd party-workman not to come to the mine to work sometime in the year 1978. This witness also provided the signature of the Ex-Chief Supervisor of the 1st party in the document marked 'X' for identification. The learned authorised representative of the 2nd party workman further submitted that the document shows that the 2nd party workman alongwith others was engaged as a wagon loader by the Ex-Chief Supervisor of the 1st party. This document has not been marked Ext. Even if it is taken into consideration it should only show that on 1-7-83 the 2nd party workman was engaged as a wagon loader under the 1st party and nothing more. On perusal of the evidence of MW No. 1 it is found that on 28-10-86 the second party workman joined as a casual labourer under the 1st party-management and worked only for 30 days. But as per the written statement of the 1st party as stated earlier the 2nd party workman worked under it for 60 days. So the evidence of this witness cannot be relied upon.

But during cross examination W.W. No. 2 admitted that the 2nd party workman worked under the 1st party intermittently. There is no evidence that he worked under the 1st party continuously for a period of one year or for 240 days within a span of one year preceding the date of termination of his service. So the first party

management was not required to comply with the provision of section 25-F of the I.D. Act. before retrenching the 2nd party workman from service. Since the second party workman was engaged as a casual labour he does not have the right to a post. Accordingly it is held that the action of the Ist party-management in terminating the service of the second party workman is lawful and justified.

12. Issue No. 2.—In view of the finding of the above issue the second party workman is not entitled to any relief.

13. Accordingly the reference is answered. Parties to bear their own cost.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1653 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुन्दरगढ़ माईनिंग लेबर कोन्ट्रक्टर कोऑप० सोसाईटी लि० के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[संख्या एल-29012/33/88-डी-III (बी)]

बी०एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1653.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sundergarh Mining Labour Contract Co-op. Society Ltd., and their workman, which was received by the Central Government on 31-7-1998.

[No. L-29012/33/88-D.III (B)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL ROURKELA

Industrial Dispute Case No. 18/97 (C)

Dated, the 19th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M., (O.S.J.S. Sr. Branch)
Presiding Officer Industrial Tribunal,
Rourkela.

BETWEEN

Sundergarh Mining Labour
Contract Cooperative Society
Ltd., At/P.O. Purunapani,
Dist. Sundergarh (Orissa) ... 1st Party

AND

Sri Patric Xess, So Gundra,
Vill. Lukumbeda, P.O. Tunida
Via Purnapani,
Distt. Sundergarh (Orissa) ... IInd Party

APPEARANCE :

For the Ist Party—Secretary SMLCCB Limited.

For the IInd Party—Sri B. S. Pati General Secretary North Orissa Worker's Union.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute for adjudication vide No. L-29012/33/88-D.III (B) dated 29-4-1992 :

"Whether the action of the management of Sundergarh Mining Labour Contract Cooperative Society Limited, Contractor at PLDQ in terminating the services of Shri Patrik Xess, a Workman w.e.f. 17th February 1987 is lawful and justified ? If not, to what relief the workman is entitled to ?"

2. The case of the 2nd party workman is that he was under continuous employment w.e.f. 12-4-81 as L.K.W. under the Ist party-management. But all of a sudden the Ist party management terminated his service illegally on 16-2-87 without any written order. So, the 2nd party workman prays to direct the Ist party-management to reinstate him in service with full back wages and all other consequential service benefits.

3. As against this, the Ist party management contended that the 2nd party workman was not employed by the society as L.K.W. from 12-4-81. He alongwith others was engaged as casual labour for a period of 30 days from 29-10-84 and for a further period of 30 days from 17-1-87 for miscellaneous work like repair and maintainance of road, removal of obstruction from road for safety movement of the vehicle, etc. only.

4 It is the further case of the Ist party Society that it does not have its own mine. It is also not a holder of mining lease. The work of raising, loading and transporting of lime stone from the mine of Rourkela Steel Plant at Purnapani Limestone and Dolomite Quarries is given to the Ist party-society on contract basis periodically by Rourkela Steel Plant. On the expiry of the contract the right of the Ist party society to work in that mine ceases. Once a contract was terminated on 25-7-85. Again another contract expired on 7-8-86. On both the occasions all the workman employed under the Ist party were retrenched after giving 30 days notice. So the 2nd party workman has no right to work in the mine at Purunapani.

5. Under all these grounds the Ist party management prays to reject the prayer of the 2nd party workman. On the basis of the above pleadings of the parties the following two issues were framed :

(i) Whether the action of the management of Sundergarh Mining Labour Contract Cooperative Society Ltd. Contractor of PLDQ in terminating the services of Sri Patrik Xess, a workman w.e.f. 17th February 1987 is lawful and justified ?

(ii) To what other relief the workman is entitled to ?

6. To prove his case the 2nd party workman examined two witnesses including himself. The Ist party management preferred to examine its cashier only.

7. Issue No. 1—Even a casual worker is a workman as defined under Section 2(s) of the I. D. Act, so the 2nd party worker is a workman. The learned Authorised representative of the 2nd party submitted that without complying with the provision of Section 25-F of the I. D. Act, the Ist party-management terminated the service of the 2nd party workman which is illegal. Admittedly the Ist party-management did not comply with the proivsion u/s. 25-F of the I. D. Act. While terminating the service of the 2nd party-workman. Section 25-F of the I. D. Act, postulates three conditions to be fulfilled by an employer for effecting a valid retrenchment, namely :—

(i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice ;

(ii) Payment of compensation equivalent to fifteen days average pay for every completed year of continuous service of any part thereof in excess of six months; and

(iii) notice to the appropriate Government in the prescribed manner.

8. It is the well settled position of law that the fulfilment of the first two requirements is mandatory to effect a valid retrenchment. But as required u/s. 25-F of the I.D. Act, the workman must prove that he was in continuous service for not less than one year under the employer continuous service has been defined under Section 25-B of the I. D. Act. It reads as follows :

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman ;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer :—

(a) for a period of one year, if the workman, during a period of twelve calender months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than :

(i) one hundred and ninety days in the case of a workman employed below ground in a mine ; and

(ii) two handred and forty days, in any other case ;

(b) for a period of six months if the workman during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of workman employed below ground in a mine ; and

(ii) One hundred and twenty days, in any other case.

Explanation ".... ...."

9. Burden lies with the workman to prove that he worked under the employer uninterruptedly for a period of one year. As per the definition of 25B (1) of the I.D. Act cessation of work due to the following grounds shall be included in continuous service :

(a) Sickness,

(b) authorised leave,

(c) accident,

(d) a strike which is not illegal,

(e) a lock-out and

(f) a cessation of work that is not due to any fault on the part of the workman.

10. If the workman failed to prove that he worked under the employer for a period of one year uninterruptedly, it would suffice to attract the provision of Section 25-F of the I. D. Act if he can prove that he has actually worked for 190 days if he is employed below ground in a mine or for 240 days in any other case within a span of one year preceding his termination. In counting 190 or 240 days, the days as explained in the explanation to clause 2 of the Section 25-B of the I. D. Act would also be taken into consideration.

11. Keeping these legal aspects in view, now it would be decided whether the Ist party-workman worked under the 2nd party for a continuous period of one year, so as to attract the provision of Section 25-F of the I. D. Act. It is not the case of the 2nd party workman that he was working below ground in a mine. It is found from the evidence of W.W. No. 1 (the second party workman) that he joined as a workman under the 1st party-management on 12-4-81 and two years thereafter he was engaged as a drilling helper under the same employer. He continued as a drilling helper till 16-2-87 whereafter his service was terminated verbally. To prove that he was working under the 1st party since 1981 he filed a certificate issued by the then Secretary of the first party society on 7-5-83 (Ext. 1) which shows that he was working as a drilling helper under the 1st party from 1981. W.W. No. 2 the then Secretary of the 1st party society admitted to have issued Ext. 1 in favour of the 2nd party workman. It further transpires from the evidence of W.W. No. 1 that his father Gundra @ Patric Xess while working as a piece rated worker under the first party got both of his legs paralysed around the year 1982. During his cross-examination W.W. No. 1 admitted that after his father was rendered invalid to work, on his request he was engaged under the 1st party. Since the legs of his father were paralysed in the year 1982, it can not be said that the 2nd party workman was engaged under the 1st party in the year 1981. Furthermore, as stated earlier W.W. No. 1 himself deposed that he joined as a workman under the 1st party on 12-4-81 and two years thereafter he was engaged as a drilling helper under the same employer. So it shows that the 2nd party workman was engaged as a drilling helper on or around 12-4-83. Since Ext. 1 shows that he was working as a drilling helper under the 1st party since 1981 it cannot be relied upon.

12. W.W. No. 1 further deposed that after the legs of his father got paralysed, first he was admitted in Purnapani Limestone and Dolomite Quarry Hospital and thereafter in I.G.H., Rourkela. The expenditure incurred towards his treatment at I.G.H. was deducted from the wages of the 2nd party workman on instalment basis of Rs. 10 per week. In support of it W.W. No. 1 filed Exhibits 2, 3 and 4 series. These exhibits shows that the 1st party management received Rs. 10 on each occasion from one Chira through Patric Xess, the 2nd party workman on 5-6-82, 12-6-82, 19-6-82, 26-6-82, 10-7-82, 17-7-82, 24-7-82, 31-7-82, 14-8-82, 21-8-82, 10-10-82, 23-10-82 and on 12-2-83 on account of advance. Since the name of the father of 2nd party workman is Gundra @ Pitxus Xess it cannot be held that the money was collected from Gundra @ Pitrus Xess through the 2nd party workman. Even if for the sake of argument it is believed that the money was paid by the 2nd party workman from his wages weekly stll it cannot be held that he worked for at least one year preceding the date of his termination. There is no any material to show that the termination of service of 2nd party workman is not justified. So it is held that the action of the 1st party management in terminating the service of the 2nd party workman is lawful and justified.

13. Issue No. II—In view of my finding in the above issue, the 2nd party workman is not entitled to any relief.

14. Accordingly the reference is answered. Parties to bear their own cost.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1654 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केरला मिनरल्स एंड मेटल्स लि० के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[संख्या एल-29012/38/96-आई०आर(विविध)]

बी०एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1654.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kollam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kerala Minerals

and Metals Ltd., and their workman, which was received by the Central Government on the 31-7-98.

[No. L-29012|38|96-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLLAM

(Dated, this the 3rd day of July, 1998)

Present :

Sri C. N. Sasidharan, Industrial Tribunal

IN

INDUSTRIAL DISPUTE NO. 15|96

BETWEEN

The Managing Director, Kerala Minerals and Metals Ltd., Chavara P.O., Kollam District.

(By M/s. Menon & Menon, Advocates, Cochi)

AND

The General Secretary, Titanium Complex Employees Union (UTUC), C|o K.M.M. Ltd., Kollam Distt.

(By Sri Ramakrishna Kurup, Advocate, Kollam)

AWARD

This industrial dispute has been referred to this Tribunal by the Government of India as per order No. L-29012|38|96-IR(M) dated 14-10-1996 for adjudicating the following issue :—

"Whether the action of the management of Kerala Minerals Ltd., Chavara, in imposing the punishment of demotion from the post of Security Guard to workman Grade II w.e.f. 14-2-1996 on Sri A. K. Ahmed Kunju is justified ? If not, to what relief the workman is entitled ?"

II. The punishment of demotion was after a domestic enquiry. According to the workman there was no proper and valid domestic enquiry. Hence the validity of the enquiry was tried as a preliminary issue and this Tribunal by order dated 18-6-1998 found that the enquiry was proper, valid and supported by legal evidence. The relevant facts involved in this case are stated in the order which I am extracting in on him by the management.

ORDER

Sri A. K. Ahammed Kunju, the workman in this case is attacking the punishment of demotion from the post of security guard to workman Gr. II imposed on him by the management.

2. The management before imposing the punishment has issued a memo of charges dated 17-1-1995 to the workman raising the following charges :

(1) That on 12th January, 1995, after leaving the factory after attending 'B' shift duty. at about 22.10 hrs., you went near the gate of the pump house at the north-west side of the effluent treatment pond on the Kolathummuku Kottarathum Kadavu Road and took a yellow metallic rod of about 1½ metre in length belonging to the company from the company's compound through the fencing :

(2) The two Security Guards viz. Sri V. C. Ramankutty Chettiar and Sri R. Ramachandran Nair who were on duty near the said Pump house inside the fencing saw the incident stated at (1) above :

(3) That eventhough you were on duty at 3rd Block at the southern side of the pigment Store in 'B' shift on 12-1-1995, you were seen at VIIth and VIIIth block near the pond area.

According to the management the above acts alleged to have been committed by the workman amount to the following very serious and grave mis-conducts for which disciplinary action is warranted against you :—

(1) Theft of Company's property under Sub-clause (5) of clause (i) of Standing Order No. 30 of the Standing Orders of the Titanium Dioxide pigment Unit of the company.

(2) Unauthorised removal of company's property under Sub-clause (22) of Clause (I) of Standing Order No. 30 of the Standing Orders of the Titanium Dioxide pigment Unit of the Company".

3. The workman submitted explanation to the memo of charges which was not found satisfactory to the management. Hence the management ordered a domestic enquiry into the charges levelled against the workman. The enquiry officer found that the charges levelled against the workman were established. The management accepted the findings of the enquiry officer and ordered the punishment in question.

(4) The workman has filed a claim statement in support of his case and the contentions are briefly as below : He was working under the management since the year 1985 and was having an unblemished service of 12 years. The management issued a show cause notice on him raising certain false allegations. Though he submitted proper reply, the management suspended him and ordered an enquiry into the allegations against him. He participated in the enquiry proceedings. The enquiry was conducted by violating the principles of natural justice. The management has not produced the records called for by the workman in this regard. The findings of the enquiry officer is perverse and against available evidence. The management failed to prove the charges against the workman. The charges are vague and lack in material particulars. The analysis of evidence is purely biased and the enquiry officer relied on extraneous matters to reach his own false conclusions. The enquiry officer has not discussed the depositions of management witnesses. The enquiry report and the proceedings are liable to be set aside. The punishment

imposed on him is also liable to be set aside and he is eligible to be posted as security guard with continuity of service and backwages.

3. The management in the counter statement has advanced their contentions which are briefly as below: The management is a wholly owned Government of Kerala undertaking. The workman was originally appointed as worker Gr. II in the mineral separation unit of the management and was temporarily assigned to perform security duties. Thereafter he was promoted as security guard and was working in the Titanium Dioxide Pigment Unit. While so the management issued memo of charges dated 17-1-1995 to him raising the above mentioned charges. The explanation submitted by the workman was not found satisfactory and the management ordered domestic enquiry. An Advocate was appointed as the enquiry officer. The workman appeared in the domestic enquiry along with his co-worker Sri N. C. Babu Chandran. All reasonable requests of the workman were allowed by the enquiry officer. All documents sought for by him were produced and sufficient opportunity was afforded by the enquiry officer to put forward contentions of the workman. On the side of the management and the workman witnesses were examined. The workman did not give evidence. On the request of the workman the enquiry officer conducted the inspection of factory premises in the presence of the workman and his co-worker. The workman has filed a detailed statement after conclusion of the enquiry proceedings. After consideration of evidence and other circumstances the enquiry officer found that the misconduct levelled against the workman were established. A copy of the enquiry report was forwarded to the workman calling for his objection. After considering all the aspects the management accepted the report and ordered the punishment in question. There were instances of issuing chargesheet earlier also against the workman for committing misconducts and he is not having unblemished service of 12 years. The enquiry officer has conducted the domestic enquiry in full compliance with and adherence to principles of natural justice and fair play. The findings of the enquiry officer are supported by legal, valid and cogent evidence which is not perverse. The charges levelled against the workman are clear and specific and he has fully understood the charges which is evident from his explanation. He has fully participated in the enquiry, cross-examined the management witnesses, examined his witnesses, produced documents and was ably assisted by a co-worker. The enquiry officer has analysed the evidence properly. Witnesses who were physically present at the time of committing of the misconduct were examined in the enquiry and they clearly stated that the workman was actually committed theft of the property. The findings of the enquiry officer are neither biased nor false as alleged. Neither the workman nor his co-worker raised any allegations against the enquiry officer or against the proceedings of the domestic enquiry at any time. He has not pointed out any violation of the principles of natural justice by the enquiry officer. The charges proved in the domestic enquiry are very serious and grave in nature particularly considering the fact that workman was the security guard of the company who himself committed theft of the valuable property of the company. However taking a lenient view the management imposed a lesser punishment avoiding the punishment of dismissal. His basic pay was protected and there was no monetary loss. The workman or the union is not entitled to get any relief in this reference. The punishment of demotion imposed by the management is legal, valid and sustainable in law and this Tribunal has no jurisdiction to consider the legality of punishment of demotion of Sec. 11-A of the Industrial Disputes Act ('the Act' for short) is not applicable to such punishment especially when it was awarded after conducting a proper and valid domestic enquiry.

6. The validity of the domestic enquiry was seriously attacked by the workman and hence that point was considered as a preliminary issue. The enquiry officer was examined as MW1 and the enquiry file containing chargesheet, explanation of the workman, enquiry proceedings, depositions of witnesses, documents and findings of the enquiry officer, has been marked as Ext. M1. The workman has not adduced any evidence.

7. The workman has a contention that the charges levelled against him as per the chargesheet are vague and lack in material particulars. This point was considered by the enquiry officer in detail and found that it is devoid of merit. On a reading of the charge sheet it is evident that the charges are specific and clear and there is no difficulty in understanding the charges. Further the workman has given detailed explanation to the charge sheet which shows that he has fully understood the charges. It is also noticeable that he has participated in the enquiry throughout without boycotting on the ground that the charges are vague and he could not understand the same. He has also not pointed out here how the charges are vague. In this state of affairs this contention of the workman is without force and liable to be rejected.

8. In the claim statement filed by the workman before this Tribunal it is stated that the enquiry has been conducted violating the principles of natural justice. It is evident from the enquiry proceedings that the workman participated in the enquiry throughout along with a co-worker, cross-examined all the management witnesses in full, examined two witnesses on his side and filed a statement after the conclusion of the evidence. The documents requested by the workman were produced by the management in the enquiry. There is nothing to show that the workman has raised any objection at any point of time during the enquiry regarding the procedure followed by the enquiry officer or against the enquiry officer. On the request of the workman the enquiry officer conducted spot inspection in the company in the presence of the worker and his co-worker. It is thus clear the enquiry has been conducted fully in compliance with the principles of natural justice and the workman has been afforded sufficient and reasonable opportunity to establish his case.

9. Now the question is whether the findings of the enquiry officer are supported by legal evidence and whether there is any perversity in the findings of the enquiry officer. The main charge against the workman is theft of a yellow metal rod from the company. The management has examined six witnesses to prove the guilt. MW1 and MW2 are security guards like

the workman and one of them belongs to the same trade union of the workman. These two security guards saw the worker coming inside the premises, taking the rod and leaving the place in a scooter. They have submitted report to the security inspector. There are absolutely no reasons to disbelieve these two witnesses. Their evidence is supported by the evidence of other witnesses including the security inspector and plant Engineer who was examined as MW6. The enquiry officer visited the company premises and assessed the possibility of the incident by inspecting the surroundings in the light of the contention of the workman that it was not possible to remove the metal rod. The evidence of all the witnesses are separately discussed by the enquiry officer. It is clear from paragraphs 20 that the enquiry officer has fully analysed the evidence of all witnesses examined on both sides and the statement filed by the workman after closing the evidence. It was come out in evidence that though the workman was posted in Block 3, he was found loitering in other blocks where the metal rod is kept. He is not expected to be in other blocks. That points needle of suspection on him. The enquiry officer fully appreciated the entire evidence and other circumstances and come to the conclusion that the workman is guilty of the charges. The findings of the enquiry officer are fully supported by legal evidence and by no stretch of imagination it can be held that the findings are perverse.

10. The workman contended before the enquiry officer that the charges against him are based on a case cooked up by security inspector Sri Appukkuttan Nair on account of his personal animosity and also is the result of a conspiracy among the two security Inspectors and two security guards examined in the enquiry. The enquiry officer has considered this contention in paras 21 and 22 and found that those allegations are baseless. It was found that the workman has not raised any such allegation in the explanation submitted by him in answer to the charge memo and no such questions were asked to the security inspector and the security guards during their cross-examination. Therefore such allegations can only be considered as an afterthought to escape from the charges. The conclusions reached by the enquiry officer is fully correct and sustainable.

11. The enquiry officer in paras. 24 and 25 of his report has discussed the statement of the worker that there is no proof regarding the theft and no possibility of such an incident in the surroundings of the company. The enquiry officer has conducted an inspection of the company premises in the presence of the workman and considered the above contentions of the workman in the light of his inspection. The enquiry officer found that the contention of the workman is devoid of merit.

12. The Supreme Court has considered the applicability of Indian Evidence Act and nature of evidence admissible in a domestic enquiry in the decision in State of Haryana v. Rattan Singh (1928 1 LLJ 46) and held thus in para 4.

> "It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to here say evidence provided it has reasonable nexus and creditability."

The Supreme Court in Sri J. D. Jain v. The management of State Bank of India (1982 1 LLJ 54) has pointed out in para 9 that the examination of evidence in a domestic enquiry is not in the same way as the examination of evidence in a criminal prosecution entailing conviction and sentence. It was held that in a domestic enquiry guilt need not be established beyond reasonable doubt, proof of misconduct may be sufficient. The High Court of Kerala considered the scope of interference by the Labour Court in the findings of the enquiry officer in the decision in Cochin Shipyard Ltd., V. Labour Court, Ernakulam (1984 LAB I.C 2220). The court in para 23 of the judgment stated that the question is whether the Labour Court had any reasons justifying the upsetting of the employer's finding. Further held that some reasons would not be sufficient and they must satisfy a more vigorous test of being cogent reasons

In the light of the above decisions also the findings of the enquiry officer in the case before me can only be held as proper, valid and supported by legal evidence. There are absolutely no reasons, particularly cogent reasons as pointed out by the High Court of Kerala in the above decision, to interfere with the findings of the enquiry officer.

13. In view of the above discussion, I hold that the domestic enquiry conducted by MW1 was fully in compliance with principles of natural justice and the findings in the enquiry are proper, valid and supported by legal evidence.

III. The question now remains for consideration is regarding the legality of punishment. As a matter of fact this Tribunal has no jurisdiction to consider the legality of punishment of demotion as section 11-A of the Act is not applicable to the punishment of demotion, especially when the punishment was awarded by the management after conducting a proper and valid domestic enquiry and on the basis of the findings of the enquiry. However I shall consider that aspect also.

IV. The workman was the security guard of the company. Such an employee is supposed to see that the valuable properties of the company are properly guarded and protected. But here is a case where the security guard himself has committed the offence of theft of the company's valuable property. The misconducts proved against the workman are very serious and grave warranting maximum punishment. It is not at all advisable to retain such an employee in service in as much as it involves loss of confidence. However according to the management taking a lenient view the management has awarded a lesser punishment of demotion avoiding the punishment of dismissal. It is also not disputed that while imposing the punishment the management has protected the basic pay of the workman and had taken care to see that he did not suffer monetary loss. Considering the seriousness and gravity of the proved misconducts and other circumstances it can only be held that the

action of management in imposing the punishment of demotion on the workman is proper legal, proportionate and fully justified. There are no extenuating circumstances also warranting interference from this Tribunal.

V. In the result, an award is passed holding that the action of Kerala Minerals Ltd., Chavara, in imposing the punishment of demotion from the post of security guard to workman grade II w.e.f. 14-2-1996 on Sri A. K. Ahammed Kunju is justified and the workman is therefore not entitled to any relief.

C. N. SASIDHARAN, Industrial Tribunal

APPENDIX

Witness examined on the side of the management
MW1. Sri A. N. Kuttan

Document marked on the side of management

Ext. M1. Enquiry file containing chargesheet, enquiry proceedings, explanation of the workman, depositions of witnesses, documents and findings of the enquiry officer.

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1655 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै० एसोसियटेड स्टोन इण्डस्ट्रीज (कोटा) के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[संख्या एल-29012/34/96-आई०आर(विविध)]
बी०एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1655.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Associated Stone Industries (Kota) and their workman, which was received by the Central Government on 31-7-1998.

[No. L-29012/34/96-IR(Misc.)]
B. M. DAVID, Desk Officer

अनुबंध

न्यायाधीश, औद्योगिक न्यायाधिकरण/केन्द्रीय/कोटा/राज०
निर्देश प्रकरण क्रमांक : औ०न्या० (केन्द्रीय)-3/97
दिनांक स्थापित : 3-1-97

प्रसंग : भारत सरकार, श्रम मंत्रालय, नई दिल्ली के आदेश सं० एल-29012/34/96-आई०आर० (विविध) दिनांक 14-10-96

औद्योगिक विवाद अधिनियम, 1947

मध्य

गणपतसिंह पुत्र इन्द्रसिंह गांव व पोस्ट गोयन्दा तहसील रामगंजमण्डी जिला कोटा ।

—प्रार्थी श्रमिक

एवं

प्रबन्धन, मै० एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) रामगंज मण्डी ।

—प्रतिपक्षी नियोजक

उपस्थित

श्री जगदीश प्रसाद शर्मा, आर०एच०जे०एस०
प्रार्थी श्रमिक की ओर से प्रतिनिधि :—
श्री आर०एस० शर्मा एवं श्री गणपतसिंह (श्रमिक)
प्रतिपक्षी नियोजक की ओर से प्रतिनिधि :—
श्री आर०एस० शर्मा प्रबन्धक/प्रशासन
अधिनिर्णय दिनांक 1-6-98

अधिनिर्णय

भारत सरकार, श्रम मंत्रालय, नई दिल्ली द्वारा निम्न निर्देश औद्योगिक विवाद अधिनियम, 1947 की धारा 10(1)(घ) के अन्तर्गत इस न्यायाधिकरण को अधिनिर्णयार्थ सम्प्रेषित किया गया है :—

"क्या प्रबन्धन मै० एसोसियेटेड स्टोन इण्डस्ट्रीज (कोटा) लि०, रामगंजमण्डी के प्रबन्धक वर्ग द्वारा कर्मकार श्री गणपतसिंह पुत्र इन्द्रसिंह वाचमेन की सेवाएं दि० 21-7-95 से पत्र से समाप्त करने की कार्यवाही वैध एवं न्यायसंगत है ? यदि नहीं तो सम्बन्धित कर्मकार किस अनुतोष का हकदार है ?"

2. निर्देश न्यायाधिकरण में प्राप्त होने पर वर्ज रजिस्टर किया गया व पक्षकारों को सूचना जारी की गयी तदुपरान्त दोनों पक्षों की ओर से अपने-अपने अभ्यावेदन प्रस्तुत किये गये ।

3. यह प्रकरण दि० 16-7-98 को वास्ते पेश होने दस्तावेज नियत था परन्तु आज प्रार्थी श्रमिक गणपतसिंह स्वयं मय अधिकृत प्रतिनिधि श्री आर० एस० शर्मा ने उपस्थित होकर प्रार्थनापत्र प्रस्तुत कर यह निवेदन किया कि पक्षकारों के मध्य लोक न्यायालय की भावना से प्रेरित होकर आपसी समझौता सम्पन्न हो गया है, अतः समझौते के आधार पर अधिनिर्णय पारित कर दिया जावे । प्रतिपक्षी नियोजक की ओर से प्रबन्धक/प्रशासन/श्री आर०एस० शर्मा उपस्थित हुए जिनने व श्रमिक पक्ष ने संयुक्त रूप से नोटेरी से प्रमाणितशुदा समझौता-पत्र प्रस्तुत किया, अतः पत्रावली तलबी में ली जाकर इन प्रपत्र को अभिलेख पर लिया गया ।

4. प्रस्तुतशुदा समझौते-पत्र को दोनों पक्षों को पढ़कर सुनाया व समझाया गया तो दोनों पक्षों ने सही होना स्वीकार किया । इस समझौते के अनुसार प्रार्थी श्रमिक

गणपतसिंह ने प्रतिपक्षी से फुल एण्ड फाईनल सेटिलमेन्ट के बतौर कुल 18,000 रुपये की राशि जरिये चैक दिनांकित 18-5-98 प्राप्त होना स्वीकार किया और अब समझौते उपरान्त कोई विवाद शेष नहीं रहना प्रकट किया । इस समझौते-पत्र का न्यायाधिकरण द्वारा भी अवलोकन किया गया जो दोनों पक्षों के हित में प्रतीत होता है तदुपरान्त समझौते-पत्र को तस्दीक किया गया । दोनों पक्ष इस समझौते-पत्र से सम्बद्ध रहेंगे । अतः प्रस्तुतशुदा समझौते-पत्र के आधार पर अधिनिर्णय इसी प्रकार पारित किया जाता है जिसको नियमानुसार समुचित सरकार को वास्ते प्रकाशनार्थ भिजवाया जावे ।

जगदीश प्रसाद शर्मा, न्यायाधीश

नई दिल्ली, 31 जुलाई, 1998

का० आ० 1656.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कैमिकल्स एण्ड प्लास्टिक इण्डिया लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-29011/3/90-आई०आर० (विविध)]

बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1656.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute btween the employers in relation to the management of Chemicals and Plastics India Ltd., and their workman, which was received by the Central Government on 31-7-98.

[No. L-29011/3/90-IR(Misc.)]

B. M. DAVID, Desk Officer

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Tuesday, the 12th day of May, 1998

PRESENT :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 52 OF 1992

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Mettur Chemical and Industrial Corporation Ltd., Mettur Dam).

The workmen represented by
The Secretary,
Mettur Chemicals & Industrial Anna Workers Union,
At. P.O. Sowdhapuram, Via Pallipalayam, Erode Tamil Nadu-638008.

AND

The Management of
Chemicals and Plastics India Ltd.,
Mettur Dam, Salem District.
(Substituted as per Order of this Tribunal in Mis. Appn. No. 205/93, dated 3-12-93).

REFERENCE :

Order No. L-29011/3/90-IR(Misc.), Ministry of Labour, dated 16 6-92, Govt. of India, New Delhi.

This dispute is coming on for final hearing on Tuesday, the 17th day of February 1998, upon persuing the reference, claim counter and all other connected materials on record and upon hearing the arguments of Thiru S. Ayyadurai, Advocate appearing for the petitioner and of Thiru T. S. Gopalan, Advocate appearing for the management, and this dispute having stood over till this day of consideration, this Tribunal made the following :—

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the manageemnt of M/s. Mettur Chemical and Industrial Corporation Ltd., Mettur Dam, Salem Dist., Tamil Nadu in retrenching S|Shri S. Raja Manickam, K. Natesan, M. Perumal, N. Karuppannan, P. Loganathan and K. Raju, Casual Labours in violation of Section 25-N of the Industrial Disputes Act, 1947 is justified ? If not, to what relief these workmen are entitled ?"

(2) On services of notices both the petitioner and the respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner-union are as follows.—

The respondent Mettur Chemical and Industrial Corporation Ltd., now taken over and managed by the management of Chemicals and Plastics India Ltd., is manufacturing chemicals such as bleaching powder, Caustic Soda, Rayon grade caustic soda etc. The basic raw materials required for manufacturing the chemicals are the lime stones. The respondent owned a stone mine at Sowdhapuram. Totally about 175 workmen were employed in the lime stone mine out of which about 50 were contract workmen. About 1300 employees were employed by the Chemical factory. 22 workmen of the mines were orally terminated on 10-8-1988. These workmen had put in service ranging from 3 to 5 years continuously. The alleged reason for termination was that there were accumulation of chemicals manufactured in the Chemical Factory and that therefore the raw materials i.e., lime stones were not necessary to the extent required

as before, but it was totally baseless. The fallsity of the respondent's allegation could be seen from the fact that the Chemical Factory did not resort to lay off or retrenchment of workmen. The 22 workmen who were orally terminated on 10-8-1988, were doing the same work as that of contract workmen. The respondent's intention was to engage the contract workmen for lesser wages instead of regular workmen. A letter dated 16-8-1988 was written by the petitioner-union to the respondent management demanding employment to the 22 workmen. When no reply was received from the respondent, an Industrial dispute was raised by the petitioner union before the Asst. Labour Commissioner, conciliation at Madras, vide letter dt. 5-9-1988. Conciliation proceedings were initiated by the Asst. Labour Commissioner. When the conciliation was pending, a notice dt. 2-11-1988 was issued by the respondent management, purporting to be 3 months notice contemplated under Sec. 25(N) of the I.D. Act, stating that they proposed to retrench 22 workmen from 2-2-1989. The said notice dated 2-11-1988 was ridiculous, because when the notice dated 2-1 -1988 was received by the petitioner-union, none of the 22 workmen were in service. The services of the workmen were terminated from 10-8-1988 onwards, they were not in service and no salary was paid. Issuing 3 months notice after terminating the service of the workmen was illegal, and in violation of Sec. 25(N)(i)(a) of the I.D. Act. The notice dated 2-11-1988 was issued prior to getting permission from the authority concerned for retrenchment as contemplated under Sec. 25(N) of the I.D. Act. Issuing 3 months notice prior to getting permission from the authority concerned for retrenchment was in violation of Sec. 25(N)(1) of the I.D. Act. After notice dated 2-11-1988, the workmen were served with a copy of the application dt. 9-11-88 on 12-11-1988. Application was addressed to the Govt. of India seeking permission to retrench 22 workmen. It was also stated that out of 22 workmen 16 have already settled. The workmen were pressurised by the management to settle their account by accepting a paltry compensation and 16 workmen succumbed to such pressure. Government of India by its letter dt. 24-1-1989 intimated the union to appear on 2-3-1989 at New Delhi for hearing on the application filed by the respondent. Hearing was adjourned to 6-3-1989 at the request of the union. Deailed conuter was filed on 6-3-1989 by the union explaining illegal action of the respondent. While the workmen were awaiting the orders from the Government on the application filed by the 1st respondent under Sec. 25(N) of the I.D. Act, an order dated 14-3-1989 was issued by the respondent by invoking the deeming provision of Sec. 25(N) of the I.D. Act, stating that since the Government failed to decide their application within 60 days of the filing of the application the application was deemed to have been allowed as per Sec. 25(N)(1)(a) of the I.D. Act, by giving 3 months notice on 2-11-1988. A cheque was also attached with the termination orders dt. 14-3-1989 for retrenchment compensation as well as the wages for the period from 10-8-1988 to 14-3-1989. The action of the respondent in terminating the services of the workmen by an order dated 14-3-1989 in violation of Sec. 25(N) of the I.D. Act. Section 25(N)(1)(a) of the I.D. Act, contemplates obtaining prior permission of the Government for retrenchment as a condition precedent to retrench the workmen and not approval after retrenchment. The respondent before obtaining permission from the Government and in-fact even before filing the application for permission from the Govt. for retrenchment terminated the services of the workman from 10-8-1988 and the termination is nonest and illegal. The application filed by the respondent seeking permission to retrench workmen after terminating their services is not in accordance with Sec. 25(N) of the I.D. Act, and therefore it has to be treated that the Management has not filed an application for retrenchment and the retrenchment is illegal and void. Retrenching workmen from 10-8-1988, onwards even before filing an application under Sec. 25(N) of the I.D. Act, before the Government is violative of Sec. 25(N) of the I.D. Act. The termination is void and retrenchment is illegal and the permission for retrenchment has not been obtained as per Sec. 25(N)(7) of the I.D. Act. The action of the respondent in terminating the services of these workmen before filing an application under Sec. 25(N) of the I.D. Act seeking permission from the Govt. for retrenchment is opposed to the decision of the Hon'ble High Court of Madras in W.P No. 3192/78. The action of the respondent issuing 3 months notice on 2-11-1988 to the workmen after retrenching them on 10-8-1988 is opposed to Sec. 25(N)(1) of the I.D. Act. Three months notice should be given only after obtaining permission from the competent authority under Sec. 25(N) and that notice should have been served while in service. In the case of the workmen concerned, the respondent has not done the same. The respondent has contravened Sec. 25(N)(1) of the I.D. Act. The workmen were retrenched firstly on 10-8-1988. After termination of their services, 3 months notice was given by the respondent on 2-11-98 stating that they would propose to terminate the service from 2-2-1989 onwards. Then again the respondent terminated the services of these workmen by notice dated 14-3-1989 and giving wages for 10-8-1988 to 14-3-1989. The workmen were not even paid their wages during the period between 10-8-1988 and 14-3-1989. Paying wages subsequently for the period from 10-8-1988 to 14-3-1989 would not cure the incurable defects committed by contravening Sec. 25(N) of the I.D. Act. If the respondent wants to retrench these workmen legally, firstly the workmen should be reinstated in service by setting aside the order of termination on 10-8-1988 and a fresh application should be filed by the management under Sec. 25(N) of the I.D. Act. The action of the respondent also amounts to malafide since an order dated 14-3-1989 was issued by the respondent when the application for retrenchment was pending before the Government. The action of the respondent in terminating the workmen, when the conciliation proceeding was still pending is malafide. Since no application under Sec. 25(N) of the I.D. Act, had been validly filed before retrenching their workmen, the retrenchment should be treated as illegal as per Sec. 25(N)(7) of the I.D. Act. There was no justification for the retrenchment of the workmen concerned. When the management could keep the contract workers in employment there was no reason for retrench-

ment of the concerned workmen. The real reason for the retrenchment of the workmen concerned was to avoid the claim for confirmation since they had completed more than 480 days of continuous service. The retrenchment of the workmen concerned by the respondent is malafide, illegal and unjust. The workmen have been suffering a lot since the date of the illegal termination of their services and their efforts to get employment elsewhere were of no avail. If the illegal order of retrenchment is not set aside and the workmen concerned are not reinstated, they will be put to great loss and sufferings. The petitioner prays to pass award holding non-employment of the workmen concerned mentioned in the order of reference dated 16-6-1992 as not justified and direct the respondent to reinstate the workmen concerned in service with continuity of service, backwages attendant benefits and cost.

4. The main averments found in the counter statement filed by the respondent are as follows :

The respondent was having two factories at Mettur for manufacture of Caustic soda. In the year 1989, the respondent got merged with Chemicals and Plastics Ltd., As such the two plants of the respondent now belong to Chemicals and Plastics India Ltd., and hence the Mettur Chemical and Industrial Corporation Ltd., and the Chemicals and Plastics India Limited shall be collectively referred to as the respondent. One of the bye-products of Caustic soda was chlorine. In view of the availability of Chlorine, the said company also used to manufacture other bye-products including Stable Bleaching Powder. The primary raw material for the manufacture of Stable Bleaching Powder is calcined lime stone. A small quantity of lime stone was also used for treating the effluents of Caustic soda plant. In order to meet its requirement of calcined lime stone,. the said company put up a Calcination unit at Sankari and also took on lease a lime stone mine at Sowdhapuram. The Sowdhapuram mines was taken on lease for a period of 20 years which was due to expire on 1998. With the constant mining operations for more than 20 years, the removal of overburdens involves higher amount of expenses thereby pushing up the cost of lime stone and there is constant decline in the output of lime stone raised. There was a decline in the demand for Stable Bleaching Powder, and the cost of manufacture of bleaching powder became unviable, could be seen from the following figures :

Year	Production of lime stone
1986-87	22481 MT
1987-88	19291 MT
1988-89 (Upto January)	10295 MT

The average monthly production of Stable Bleaching Powder was also going down, could be seen from the following figures :

Year	Av. Production/Month
1986-87	668.58 MT
1987-88	55742 MT
1988-89 (Upto January)	366.43 MT

In Sowdhapuram Mines, the raising of lime stone and the work connected therewith were attended to by the permanent workmen. The respondent also used to engage casual workmen primarily for the aforesaid work, gardening and grading of lime stone meant for despatch. These casual workmen were kept as a distinct category & in view of the nature of engagement they were treated differently from the permanent workmen. As the viability of the mining operations was continuously getting eroded, it was decided by the respondent, to curtail its activities in the Sowdhapuram Mines and also ultimately disband the entire labour force. In the first instance, the respondent stopped engagement of 22 casual workmen from 10-8-1988. As industrial dispute was raised regarding the stoppage of the 22 casual workmen and it was urged on behalf of the 22 casual workmen that their non-engagement would amount to retrenchment, that the Sowdhapuram Mines was covered by Chapter V-B of the I.D. Act and the retrenchment was bad as no permission was taken under Sec. 25-N of the I.D. Act. The respondent was advised to treat the 22 casual workmen as continuing in employment even after 10-8-1988 and make an application for retrenchment under Sec. 25N of the I.D. Act, offering them notice pay and compensation. On 2-11-1988, notice was served by the respondent on all 22 casual workmen that they were going to be retrenched from 2-2-1989 and their dues will be settled. On 4-11-1988 16 out of 22 casual workmen came forward to receive their wages from 10-8-1988 and also the ad hoc amount offered by the respondent and leave the services on voluntary basis. On that basis, on 4-11-1988, settlements were concluded with the 16 out of 22 workmen under Sec. 18(1) of the I.D. Act, and their dues were settled. Arrears of wages was not received by the other 6 workmen. Notice was put up on 27-2-1989 informing that the 6 casual workmen had not turned up to receive their wages for August, September, October, November and December 1988 and January 1989 and workmen were advised to receive the wages at any time from the Mines office. Retrenchment application preferred by the respondent was taken on file on 9-1-1989. Sec. 25-N of the I.D. Act, requires the Specified authority to dispose of the application either refusing or granting permission within 60 days from the date of application and if it is not disposed within 60 days, the permission applied for shall be deemed to have been granted on the expiry of 60 days. The application for retrenchment was taken up for enquiry on 6-3-1989. As the application was taken on file on 9-1-1989, the application should have been disposed of on or before 9/10-3-1989. No orders were received either granting or refusing permission till 14-3-1989. Hence in term of Sec. 25-N(4) of the I.D. Act, the respondent proceeded on the footing that the permission was granted. On 14-3-1989 orders of retrenchment were issued by the respondent retrenching 6 workmen from service offering them arrears of wages from 10-8-1988 to 14-3-1989 as well as retrenchment compensation and notice pay. The retrenchment is perfectly valid and justified and the same is not liable to be interferred with. Except stable bleaching powder, the other products manufactured by the respondent do not require lime stone. It is denied that in the lime stone mines, 175 workmen were employed, and that there

were 50 contract workmen. It is denied that the strength of workmen in the two caustic soda plants was 1300. The stable bleaching powder was only a by-product and owing to the fall in the production of bleaching powder, there was surplusage in the Mettur plant which was removed by voluntary retirement scheme in 1989 under which 173 workmen left the service of the respondent. Voluntary retirement scheme was also put up in the Sowdhapuram Mines under which 63 workmen left the services. Even in the retrenchment application made on 2-11-1988 it was indicated by the respondent that the prospect of manufacture of bleaching powder was bleak. The manufacture of bleaching powder was totally stopped from June 1992. It is denied that the retrenchment of 6 casual workmen was resorted to with the intention of getting the work done by contract labour on low wages. Stoppage of the 6 casual workmen on 10-8-1988 is no longer an issue as all the 22 casual workmen who were stopped on 10-8-1988 including the 6 casual workmen were treated as continuing in employment and they were paid wages even after 10-8-1988. On 2-11-1988, respondent applied for permission under Sec. 25-N of the I.D. Act, for retrenchment of the 22 casual workmen including the 6 casual workmen involved in the present dispute. When the application was made all the 22 workmen were treated as continuing in employment and it is denied that they were not in the employment of the respondent on the date of the application for retrenchment. While 3 months notice for retrenchment has to be given, the retrenchment cannot be effected without permission. Hence on 2-11-1988, notice proposing retrenchment was issued to all the concerned casual workmen and retrenchment was effected on 14-3-1989 when the permission was deemed to have been granted. 16 out of the 22 workmen had voluntarily settled their claims and it is denied that they were pressurised to enter into a settlement. The respondent was not served with a copy of the counter statement said to have been filed by the petitioner before Government of India. Respondent was justified in terminating the services of the 6 casual workmen by the order dated 14-3-1989 and there is no question of violation of Sec. 25-N of the I.D. Act. The refrence to the alleged retrenchment on 10-8-1988 is wholly irrelevant as the retrenchment is the one effected on 14-3-1989. Concerned 6 casual workmen have received not only notice pay and compensation but also their arrears of wages from 10-8-1988 to 14-3-1989 and hence the termination cannot be said as illegal. In as much as the petitioners were treated as continuing in employment and were paid wages from 10-8-1988 to 14-3-1989, it is no longer open to them to challenge the validity of the purported termination on 10-8-1988. The legal consequences of the purported termination on 10-8-1988 for violation of Sec. 25-N of the I.D. Act, would be that the workmen were entitled to wages and they have been paid such wages. The petitioner's contention that 3 months notice should have been given after getting the permission is not tenable. Application for retrenchment was submitted on 2-11-1988 reckoning 3 months notice as from that date. The workmen were informed that the proposed retrenchment would take effect from 2-2-1989. However, as the application for retrenchment was taken on file only on 9-1-1989 and as the 60 days period had expired on 9-3-1989, the order of retrenchment was issued on 14-3-1989. Though the notice for retrenchment was given on 2-11-1988, as the permission was deemed to have been granted only on 9-3-1989, the retrenchment could not be effected earlier than 9-3-1989 by the respondent and the retrenchment was bad is denied, It is denied that the retrenchment was made malafide. The application for retrenchment made on 2-11-1988 was perfectly valid, and when permission was deemed to have been granted on 9-3-1989, there was no legal impediment for the respondent to effect retrenchment on 14-3-1989, the retrenchment has been accepted by 16 out of the 22 workmen, it is needlessly pursued by the petitioner-union. The retrenchment of the 6 casual workman is fully justified. The respondent prays to pass an award upholding the retrenchment of the 6 workmen and reject the claim of the petitioner.

5. On bealf of the petitioner, WW1 and WW2 were examined and Exs. W-1 to W-16 have been marked. On behalf of the respondent, MW1 and MW2 were examined and Exs. M.1 to M.21 have been marked.

6. The Point for our consideration is : Whether the action of the manageemnt of M/s. Mettur Chemical and Industrial Corporation Ltd., Mettur Dam, Salem Dist. Tamilnadu in retrenching S/Shri S. Raja Manickam, K. Natesan, M. Peruaml, N. Karuppannan, P. Loganathan and K. Raju, Casual labourers in violation of Section 25-N of the Industrial Disutes Act, 1947 is justified ? If not, to what relief, these workmen are entitled ?"

7. The Point : The respondent is having two factories at Mettur for manufacture of Caustic soda. One of the by-products of caustic soda is chlorine. The respondent was also manufacturing stable bleaching powder for which the primary raw material is calcine lime stone. To meet its requirements, of calcine lime stone, the respondent took on lease a lime stone mine at Sowdhapuram for a period of 20 years which will expire on 1998. The respondent had regular workman/casual workman and contract workmen in the Sowdhapuram mines. According to the respondent, since the viability of miningn operations was continuously getting eroded and respondent wanted to temporarily suspend stable bleaching powder manufacture and for other reasons decided to curtail is activities in the Sowdhapuram mines and also ultimately disband the entire labour force. In the first instance, the respondent stopped engagement of 22 casual workmen from 10-8-1988 against which a dispute was raised on the ground that the non-engagement would amount to retrenchment since Sowdhapuram Mines was covered by Chapter VB of the I.D. Act, and retrenchment was bad as no permission was taken under Sec. 25-N of the I.D. Act. On 2-11-1988 notice was served by the respondent on all the 22 casual workmen that they were going to be retrenched from 2-2-1989. The individual notice sent to the six workmen concerned in the dispute and acknowledgement sent by the workmen are Ex. M.1/series, marked alongwith the application dated 9-11-1988 sent by the respondent management to the Secretary to the

Government of India, Ministry of Labour, as an application/permission for retrenchment u/s. 25N of the I.D. Act. On 4-11-1988, out of 22 casual workmen who were served notice, 16 of them received their wages from 10-8-1988 and also the adhoc amount offered by the respondent and left the services of the respondent on voluntary basis. The list of employees who had accepted the exgratia amount as per the settlement u|s. 18(1) of the I.D. Act, with the management on 4-11-1988 and copy of such settlements are Ex. M.4. The six workmen concerned with this Industrial dispute did not accept the offer of ex-gratia by the management and they did not receive their wages for August to December 88 and January 1989. Meanwhile on 9-11-1988, the respondent management sent Ex. M.1 application for permission for retrenchment required u/s. 25-N of the I.D. Act, to the Secretary to Government of India, Ministry of Labour. The said application was returned by the Government of India by a letter dated 28-11-88 requiring certain clarifications. The said letter is Ex. M.2. The respondent sent necessary clarifications on 5-1-1989 with enclosures including a settlement between the management and the 16 workmen who have accepted exgratia and entered into a settlement with the management u/s. 18(1) of the I.D. Act. The said letter with enclosures is Ex. M.3. The receipt of this application by the Govt. of India for the purpose of 25-N(4) of the I.D. Act was noted as 9-1-1989 as per the letter dated 16-1-1989 sent by the Government of India to the respondent. The Govt. of India had sent a letter dated 24-1-1989 for a meeting to beheld at Delhi on 2-3-1989 regarding permission for retrenchment of workers u/s. 25N. While so, on 27-2-1989 the respondent management sent a notice to all the six workmen concerned in this dispute advising them to receive their wages for the months of August to December 1988 and January 1989 and copy of the said notice is Ex. M.7. By a letter dated 2-3-1989 marked as Ex. M.8, the union requested the management to give employment to the six workmen and inform that they will not receive the salary since the conciliation regarding non-employment is pending. The reply sent by the respondent management to the petitioner union's Ex. M.8 letter is Ex. M.9 wherein apart from refuting the allegations of the petitioner union, the respondent has mentioned that the application for retrenchment is pending with the Government of India, and therefore, the salary is offered to the 6 workmen concerned in the dispute. Thereafter on 14-3-1989 respondent management has issued a new notice to the concerned six workmen mentioning that since no order was passed by the Govt. of India regarding permission to retrench, the workmen it should be deemed that permissionn has been granted to the management u/s. 25(N)(4) of the I.D. Act and therefore, each workmen was offered retrenchment compensation at the rate of 15 days salary for each completed year of service and salary from August 1988 to 14-3-1989. The copy of individual notice is Ex. M.10. The petitioner union filed W.P. No. 4519/89 before the Hon'ble High Court, Madras praying for a declaration that the permission deemed to have been granted by the Government of India for the retrenchment as mentioned by the management, is illegal and unjust and to provide work to the said workman. The Hon'ble High Court was pleased to dispose of the main writ petition by consent as agreed by all parties that the declaration prayed for in the writ petition need not be granted but with a direction to pay retrenchment compensation to the six workmen mentioned in the writ petition without prejudice to the rights available to them under the I.D. Act, and also with direction to the Assistant Labour Commissioner to complete the conciliation proceedings within a period of 2 months. Copy of the order of Hon'ble High Court is Ex. M.11. The individual notice to each workmen enclosing a cheque for the amount due to each workmen and also acknowledgement signed by each workman are Ex. M.12/series. On 19-1-1990, the Asst. Labour Commissioner, Madras has sent a failure of conciliation report to the Government which is marked as Ex. M-13. The statement showing details of exgratia by the management and amount so far received by six casual workers is Ex. M.14. The letter dated 20-12-1989 sent by the petitioner-union regarding bonus for the mine workers for the year 1988-89 and also to consider the six casual workers in Ex. M.15. The notice dated 10-7-1994 offering voluntary retirement scheme by the respondent management to its workers is Ex. M-16. Another notice dated 10-7-94 offering special gratuity payment in addition to the amount payable under the payment of Graduity Act, 1972 to employees is Ex. M.17. The permission granted by the Government of India to the respondent management for closure of Sowdhapuram Lime Stones Mines is Ex. M.18. The closure notice dated 4-11-1994 issued by the respondent management declaring that the Sowdhaparam Lime Stone Mines will be closed with effect from 7-12-1994 and the individual letters retrenching the workers from 7-12-94 is Ex. M.19. Thereupon the petitioner union filed W.P. 18719/94 praying the Hon'ble High Court to pass an order of Interim Injuction restraining the management from denying employment to the workmen and also to stay the order of the Government of India, Ministry of Labour granting permission to close the establishment. The Hon'ble High Court has passed the following order :

> "After giving my careful consideration to the rival sumbissions based on the decisions cited by both the parties, I must say that the impugned order is laconic and the first respondent could have given proper reasons for coming to the conclusion that the Sowdapuram Mines are liable to be closed. The necessary considerations which should go into an order of this nature, have not been made apparent in the impugned order. But on this ground is it proper to set aside the order and ignore the evidence adduced by the Company necessitating the closure of the mines ? In June 1992 itself the manufacturing of bleaching powder was stopped. Therefore, there was no requirement of lime stone for the manufacture of bleaching powder.Thereafter, burnt lime was only used for the limited purpose of making bleaching-liquor. Even for this they have adopted an alternative technology for killing sniff chlorine by the use of Sodium Hydro-

chloride. The conntention that the installation of new process is to commence from January 1995 has not been disputed by the petitioner-union. If that is so, the mining of lime-stone becomes practically useless to the Company and is totally redundant for melting any requirement of the company. In my opinion, this aspect of the case is one of the most crucial circumstances to be taken into consideration while passing orders in an application seeking permission to close down the mines. The argument of Mr. Prasad in doing so, the Company cannot ignore the lives and livelihood of the workmen is a little exaggerated because the Company had been offering a scheme of Voluntary Retirement under which three months salary for each year of service was being offered.A perusal of the settlement arrived at between the 52 workmen, after filing the writ petition, shows that they have received amounts ranging between Rs. 1,45,000 to Rs. 2,35,000. In as much as the entire activity in the mine has come to a stop, and the Company has no intention of reviving the mining operations, I am of the opinion that the balance of convenience is not in favour of the petitioner-union, by the grant of injunction. On the other hand, taking a pragmatic approach to the issue, I am of the opinion that is only 22 workmen who should be satisfied. Pending final adjudication of the matter if the interest of the 22 workmen are taken care of the petitioner-union cannot have any grievance. In this view of the matter, I dismiss the application for injunction and the application for the stay subject to the condition that the second respondent company shall pay the 22 workmen who have not accepted the Voluntary Retirement Scheme, 75 per cent of the last drawn wages till the disposal of the Writ petition. It is equally open to the 22 workmen if they so desire to negotiate and accept the the voluntary retirement."

Ex. M.21 is the letter of the Govt. of India, Ministry of Mines, dated 19-12-1995 permitting the respondent under Rule 23(4) of Mineral Consideration and Development Rules 1988 to abandon the Sowdhapuram lime stone mines.

8. Ex. W-1 is the letter dated 20-2-1989 sent by the respondent management to the Assistant Commissioner of Labour regarding the retrenchment of six casual workmen out of 22 casual workmen who were proposed to be retrenched and requesting the conciliation to be restricted to six casual workmen only. Ex. W-20 is the letter of union dated 6-3-1989 requesting the Ministry of Labour not to grant permission for retrenchment of the workmen and to order the management to reinstate the 22 workmen. Ex. W-3 is a notice to one of the 6 workmen by name Natesan which is a copy already marked as Ex. M-10. Ex. W-4 is copy of order of Hon'ble High Court, is another copy of Ex. M-11. Ex. W-5 to W-8 are notices sent to workmen which have been already marked as Ex. M-12 series. Ex. W-9 conciliation failure report is already marked as Ex. M-13. The union's letter dated 1-2-1989 to the Manager of the Mines, requesting to reinstate 22 workers and for other demands is Ex. W-10. Ex. W-11 is another copy of Ex. M-8. Ex. W-2 is letter dated 14-3-1989 issued by the union to the Assistant Labour Commissioner regarding introduction of machines for the removal of earth during the pendency of conciliation regarding the 22 workmen. Ex. W-13 is another letter sent by the Union to the General Manager of the respondent on 16-8-1989 regarding the purchase of lime stone and also non-employment of 22 workmen. Ex. W-14 is the reply sent by the management to the Union to the above letter. W-15 is the rejoinder sent by the union to W-14 letter. Ex. W-16 is the letter sent by the management to the union regarding the retrenchment of 6 casual workmen and payment of goodwill incentive to them.

9. The contention of the petitioner-union is that the management resorted to retrenchment of these workmen without getting necessary permission required under Sec. 25-N of the I.D. Act and though there was opportunities available to engage these workmen, the management has resorted to retrench them without sufficient cause. The contention of the respondent management is that due to competition, more expenses in procuring lime stone by engaging labourers and also due to continuous increase in the cost of production etc. the management had to retrench the workmen and also made offers by introducing voluntary retirement scheme and also special gratuity payment in addition to the amount payable under the Payment of Gratuity Act towards rehabilitation of employees opting to retire voluntarily and also the management had no other option to close down the Sowdhapuram Mines itself, after getting necessary permission from the Government of India. It is true that initially these six workmen were stopped from work, by an oral order dated 10-8-1988. The oral termination order terminating these six workmen is non-est because no prior permission was obtained from the Government as required u/s. 25-N of the I.D. Act. Therefore, the management has offered salary to the 6 workmen w.e.f. 10-8-1988. Though they were reinstated in service, the reinstatement was only on paper. Neither the workers were allowed to work nor they reported for duty and therefore by individual letters dated 14-3-1989 the management offered salaries from August 1988 to 14-3-1989 alongwith retrenchment compensation to each individual workman is found from Ex. M-10/series. On 9-11-1988, the management has sent necessary application for permission to retrench the workman. The said Ex. M-1 application was replied by the Government of India, requesting certain clarification and said letter is Ex. M-2. On 5-1-1989 the respondent management has sent necessary particulars and the said letter is Ex. M-3. On receipt of the letter sent by the management by a letter dated 16-1-1989 Government of India has sent Ex. M-5 letter wherein it is mentioned that the date of receipt of the application sent by the management will be deemed to be 9-1-1989 for the purpose of Sec. 25N(4) of the I.D. Act. In this context, it is necessary to refer to S.25(N) and Sub.S 4 of Sec. 25N of I.D. Act. Under Sec. 25N(4), if the appropriate Government or specified authority does not communicate the order

granting or refusing to grant permission to the employer within a period of 60 days from the date of which such application is made, the permission applied for shall be deemed to have been granted on the expiry of the said period of 60 days. In this case, under Ex. M-5, Government of India has mentioned that date of receipt of the application will be deemed to be 9-1-1989 for the purpose of Sec. 25N(4) of the I.D. Act. Therefore, the 60 days contemplated under Sec. 25N(4) would be over on 10-3-1989. Till that date the Government of India has neither granted nor refused permission to retrench the workmen. Therefore, on 14-3-1989, the management has effected retrenchment as seen from Ex. M-10/series. In Ex. M-10/series itself which are notices sent to each individual workmen, the management has mentioned that the Govt. of India is deemed to have granted permission u/s. 25N(4) and therefore, has offered retrenchment compensation u/s. 25N(1)(a) and also salary from August, 1988 till the date of retrenchment i.e. 14-3-1989. Subsequent to Ex. M-10/series retrenchment notices, the petitioner-union has filed Writ petition before the Hon'ble High Court wherein Hon'ble High Court has ordered that retrenchment compensation may be accepted by the concerned workman without prejudice to the rights available to them under the I.D. Act. The petition filed by the petitioner-union before the Hon'ble High Court is against the order of retrenchment by the respondent management on 14-3-1989 and not the earlier oral order of retrenchment during August 1988. Similarly conciliation proceedings were also held only against retrenchment order dated 14-3-1989. Therefore, the point to be decided now is whether the retrenchment dated 14-3-1989 is valid in law. The point to be decided is whether the respondent has violated Sec. 25N of the I.D. Act in retrenching these six workmen. If there is any violation of Sec. 25N of the I.D. Act, there cannot be any justification for retrenchment of these workmen. The Learned counsel for the respondent management argued that if there is no violation of Sec. 25N, the Court cannot go into the question of retrenchment because the Court cannot go beyond the reference which is with regard to the retrenchment of 6 workmen alone. As already stated the management has applied for permission to retrench 22 workmen out of which 16 have entered into individual settlements by accepting ex-gratia payment and the remaining 6 workmen alone were said to be retrenched as per the application made by the respondent management. The date of application for the purpose of Sec. 25N(4) was also held as 9-1-1989 by the Government of India. Government of India ought to have sent a reply either granting permission or refusing permission to retrench these 6 workmen within 60 days from 9-1-1989. Since there was no communication from the Govt. of India as provided under Sec. 25N(4) of the I.D. Act, the management has instructed these 6 workmen as if permission is deemed to have been granted to retrench them and sent retrenchment notice on 14-3-1989. The learned counsel for the petitioner also did not dispute that there was no communication prior to 10-3-1989 either granting for refusing permission to retrench the workmen. Therefore, on the question of validity of retrenchment notice dated 14-3-1989 there is no dispute that it is legally valid. The management has even applied for closure of the mines and the mines has been actually closed w.e.f. 8-12-1994 as admitted by both sides. Ex. M-21 is the permission to abandon Sowdapuram Mines. Even in the case of 22 permanent workmen in W.P. No. 18719/94 Writ petition filed by the petitioner-union to stay the implementation of the order of closure and also injunction from closing the mines, the Hon'ble High Court has observed as follows :

> "After giving my careful consideration to the rival submissions based on the decisions cited by both the parties, I must say that the impugned order is laconic and the first respondent could have given proper reasons for coming to the conclusion that the Sowdapuram Mines are liable to be closed. The necessary considerations which should go into an order of this nature, have not been made apparent in the impugned order. But on this ground is it proper to set aside the order and ignore the evidence adduced by the Company necessitating the closure of the mines ? In June 1992 itself the manufacturing of bleaching powder was stopped. Therefore, there was no requirement of lime stone for the manufacture of bleaching powder. There after, burnt lime was only used for the limited purpose of making bleaching liquor. Even for this they have adopted an alternative technology for killing sniff chlorine by the use of sodium chloride. The contention that the installation of new process is to commence from January, 1995 has not been disputed by the petitioner union. If that is so, the mining of lime-stone becomes practically useless to the Company and is totally redudant for meeting any reuqirement of the company. In my opinion, this aspect of the case is one of the most crucial circumstances to be taken into consideration while passing orders in an application seeking permission to close down the mines. The argument of Mr. Prasad that in doing so, the Company cannot ignore the lives and livelihood of the workmen is a little exaggerated because the company had been offering a scheme of Voluntary Retirement under which three months salary for each year of service was being offered. A perusal of the settlement arrived at between the 52 workmen after filing of the writ petition, shows that they have received amounts ranging between Rs. 1,45,000 to Rs. 2,36,000. In as much as the entire activity in the mine has come to a ston and the Company has no intention of reviving the mining operations, I am of the opinion that the balance of convenience is not in favour of the petitioner-union, by the grant of injunction. On the other hand taking a pragmatic approach to the issue, I am of the opinion that is only 22 workmen who should be satisfied. Pending final adjudication of the matter if the interest of the 22 workmen are taken care of the petitioner-union cannot have any

grievance. In this view of the matter, I dismiss the application for injunction and the application for the stay subject to the condition that the second respondent company shall pay the 22 workmen who have not accepted the Voluntary Retirement Scheme, 75 per cent of the last drawn wages till the disposal of the Writ petition. It is equally open to the 22 workmen if they so desire to negotiate and accept the voluntary Retirement".

The permission granted to the management to close the mines is Ex. M.18. Ex. M-19 is the closure notice. In the case of the 22 permanent workmen who have not accepted the Voluntary Retirement Scheme, the Hon'ble High Court has ordered to pay 75 per cent of last drawn wages till the disposal of Writ Petition or to negotiate and accept the Voluntary Retirement Scheme, by the 22 workmen. But dispute is with regard to six casual workmen out of 22 casual workmen who were said to be retrenched in 1989. 16 out of the 22 casual workmen have accepted exgratia payment offered by the management and entered into individual settlements with the management u/s. 18(1) of the I.D. Act. The exgratia offered by the management and amount so far received by the casual workers concerned in this dispute is Ex. M.14. There is no dispute with regard to the actual amount of retrenchment compensation and salary and also the balance amount due to every one of these six workmen. Since the mines itself has been closed, there is no chance of re-employment of these workmen. I have already held that the workmen have been retrenched as per Sec. 25-N(4) of the I.D. Act. The amount due to the workmen even during 1989 is in the hands of the respondent management only. Ends of justice would be met with if balance amount mentioned in Ex. M.14 is paid with 18 per cent interest to each workman who was retrenched in 1989.

In the result, award is passed holding that the retrenchment of 6 workmen is justified, and these workmen are entitled to the balance amount given below, each with 18 per cent interest from 1-1-1990 till the date of payment.

Name	Balance amount
S. Rajamanickam	9469.70
K. Natesan	9469.70
M. Perumal	9455.70
N. Karuppannan	9699.20
P. Loganathan	9699.20
K. Raju	9685.20

No Costs.

Dated, this the 12th day of May, 1998

S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner/workmen :

W.W. 1 : Thiru E. Chinnathambi

W.W. 2 : Thiru M. Perumal

For Management side :

M.W. 1 : Thiru S. Ravichandran

M.W. 2 : Thiru A. Ranganathan

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W-1/20-2-89 : Letter from the Management to the Asst. Labour Commissioner (xerox cooy).

Ex. W-2/6-3-89 : Letter from the petitioner-union to the Labour (xerox copy).

Ex. W-3/14-3-89 : Order of retrenchment issued to the workman by the Management (xerox copy).

Ex. W-4/21-11-89: Order of the High Court, Madras (xerox copy).

Ex. W-5/1-1-90 : Order issued by the management to the workman concerned (xerox).

Ex. W-6/1-1-90 : Order issued by the management to the workman concerned (xerox).

Ex. W/7-1-1-90 : Order issued by the management to the workman concerned (xerox).

Ex. W-8/1-1-90 : Order issued by the management to the workman concerned (xerox)

Ex. W-9/19-1-90 : Conciliation failure report (xerox).

Ex. W-10/30-1-89 : Letter from the Union to the Management (xerox copy).

Ex. W-11/2-3-89 : Letter from the Union to the Management (xerox copy).

Ex. W-12/14-3-89 : Letter from the Union to the Asst. Labour Commissioner (xerox).

Ex. W-13/16-8-89 : Letter from the Union to the Management (xerox).

Ex. W-14/24-8-89 : Letter from the Management to the Union (xerox).

Ex. W-15/5-9-89 : Letter from the Union to the Management (xerox copy).

Ex. W-16/16-1-90 : Letter from the Management to the Union (xerox).

For Respondent-management :

Ex. M. 1/9-11-88 : Application for retrenchment alongwith Form PA and enclosures (xerox).

Ex. M-2/28-11-88 : Letter from Desk Officer, Ministry of Labour, New Delhi (xerox copy)

Ex. M. 3/5-1-89 : Re. submission application for petitioner for retrenchment alongwith enclosures (xerox).

Ex. M-4/4-11-8 : Statement showing the list of casual workers who had accepted the exgratia amount as per 18(1) (settlement) (xerox).

Ex. M-5/16-1-89 : Letter from Desk Officer, Ministry of Labour for having received application.

Ex. M-6/24-1-89 : Letter from Desk Officer, Ministry of Labour, New Delhi directing the parties for hearing on the application for retrenchment (xerox copy).

Ex M-7/27-2-1989 : Management Notice, SEM/211, advising six casual workmen to receive wages for the months of August, September, October, November and December, 1988 and January, 1989.

Ex. M. 8/2-3-89 : Letter from Mettur Chemicals and Industrial Anna Workers Union, commenting on the Management notice of 27-2-1989 (xerox).

Ex. M. 9/3-3-89 : Mgt. reply dated 3-3-89 (No. SLM/234) in response to Union letter dt. 2-3-89.

Ex. M. 10/14-3-89 : Order of retrenchment of 14-3-1989 sent under Reg. Ack. due alongwith compensation cheque to the six casual workmen (xerox copy).

Ex. M. 11/21-11-89 : Order of Madras High Court dt. 21-11-89 in W.P. No. 4519/89 (xerox copy).

Ex. M. 12/ : Order issued by the Management to the 6 casual workmen dt. 7-1-90 consequent to the direction of the High Court order dt. 21-11-89 and reply received from them (xerox copy).

Ex. M. 13/19-1-90 : Conciliation failure report (xerox).

Ex. M. 14/ : Statement showing details of ex-gratia offered by the Management and amount so far received by the six casual workers (xerox copy).

Ex. M. 15/23-12-89 : Mettur Chemicals and Industrial Anna Workers Union letter (xerox copy).

Ex. M. 16/10-7-94 : Mgt. notice No. A-9249 dt. 10-2-94 announcing Voluntary Retirement Scheme (xerox copy).

Ex. M. 17/10-7-94 : Mgt.'s notice P & A/9250 dt. 10-7 94 for special gratuity (xerox copy).

Ex M 18/4-11-94 : Approval order from Ministry of Labour, Govt. of India for closing of Sowdapuram Mines (xerox copy).

Ex. M. 19/4-11-94 : Mgt. notice dt. 4-11-94 announcing closure of Mines (xerox copy).

Ex. M. 20/4-11-94 : Order of High Court dt. 4-11-94 in W.P. No. 18719/94 (xerox copy).

Ex. M. 21/19-12-95 : Letter from Regional Contractor of Mines to Vice President (Workers) Chemical and Plastics India Ltd., (xerox copy).

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1657.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पुरनापानी लाईमस्टोन एण्ड डोलोमाइट क्वारी के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-42012/8/93-आई.आर. (विविध)]

बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1657.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Purnapani Limestone & Dolomite Quarry, and their workman, which was received by the Central Govvernment on 31-7-98.

[No. L-42012/8/93-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 35/97(C)

Dated, the 29th June, 1998

PRESENT:

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer
Industrial Tribunal,
Rourkela.

Between:

The General Manager
Purnapani Limestone & Dolomite
Quarry of RMD, SAIL,
Rourkela-11 ..1st party

AND

The General Secretary,
Rourkela Shramik Sangh,
PO : Purnapani,
Distt : Sundergarh ..IInd Party

APPEARANCE:

For the 1st Party.—Sri R. C. Tripathy, Law Officer.

For the IInd party.—Sri A.K. Pandey. Secretary.

AWARD

The Govt. of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide reference No. L-42012|8|93-IR (Misc.) dated 28-07-94 for adjudication.

"Whether the action of the management of Purnapani Limestone and Dolomite Quarry, Raw material division, S.A. IL. Rourkela Zone, Rourkela-11 in not giving increment and promotion during the year 1987 and deducting Rs. 3333 from the salary of Smt. Tillo Kerketta was justified? If not, to what relief the workman is entitled ?"

2. The case of the 2nd party workmen represented by Rourkela Shramik Sangha (hereinafter referred as R. S S.) in short is that she was working as garden attendant under the 1st Party management. A quarters bearing no. B|307 situated at Purnapani was allotted in her favour by the management. But when she refused to take the membership of Rourkela Mazdoor Sabha, a stooge union of the 1st party management she was falsely alleged that she permitted one outsider to stay in the quarters allotted in her name while she herself was staying in her own house. An enquiry committee consisting of Mr. R. K. Panda, Deputy Manager, (P. and Eng.) was constituted by the management to enquire into the allegation. Without following the principles of natural justice the E.C. held the 2nd party workman guilty of the charge and submitted its report to the disciplinary authority who concurred with the finding of the Enquiry Committee and reduced the basic pay of the 2nd party workman by one stage and accordingly her basic pay was fixed at Rs. 746 per month. Further a sum of Rs. 3333 was deducted from her wages. So an industrial dispute was raised by the 2nd party workman through R.S.S. and when the dispute could not be settled in the conciliation proceeding, it was referred to the government who in turn referred it to the Tribunal.

3. As against this, the 1st party management contended that its estate supervisor reported that the quarters allotted to some of its employees including 2nd party workman were given on rent to outsiders. On this report a committee was constituted to make spot verification to ascertain the varacity of the complaint. The committee vide its report dt. 24-4-87 reported that the 2nd party workman and four others were not staying in their quarters and the same were in physical occupation of the outsiders. So the allotment order wherein quarter no. B|307 was allotted to the 2nd party workman was cancelled and she was directed to deliver physical possession of the quarters to the 1st party within 15 days from 27-4-87. It was also made clear that in the event of her failure to deliver physical possession of the said quarters to the management within the stipulated period she would be liable to disciplinary action for unauthorised occupation of quarters and P. P. rent would be reliased. from her. When the 2nd party failed to deliver physical possession of the quarters within the time fixed the competent authority vide memo dt 10-9 87 instructed for recovery of P.P. rent from her. She was further served with a chargesheet on 21-5-87 for unauthorised use of quarters and was called upon to give explanation to it. The explanation furnished by her having been found not satisfactory, an enquiry committee consisting of Sri R. K. Panda, Dy. Manager (Pl. & Eng.) alone was constituted to enquiry into the charge. The enquiry committee enquired into the charge and after assessing the evidence on record submitted its report to the disciplinary authority holding the charge as established. On the basis of the report of the E.O. the disciplinary authority vide order dt. 27|28-7-87 reduced the wage of the 2nd party workman by one incremental stage. The recovery of penal rent was stopped after the order of punishment was passed against the 2nd party workman.

4. On the basis of the above pleadings of the parties, the following three issues were framed :

1. "Whether the domestic enquiry is fair and proper ?
2. Whether the action of the management of Purnapani Limestone and Dolomite Quarry, Raw Material Division, SAIL, Rourkela Zone, Rourkela-11 in not giving increment and promotion during the year 1987 and deducting Rs. 3333 from the salary of Smt. Tillo Kerketta was justified ?
3. If not, to what relief the workman is tnittled ?"

5. To establish its case the 1st party management examined two witoesses M W. 1 is the Asst. Manager (Personnel) and M.W.-2 is Mines Superintendent who had enquiry into the case. The 2nd party workman did not prefer to examine any witness. At the outset it is pertinent to mention here that, where a domestic enquiry has been conducted, the employer may rely upto it to justify its action against the delinquent, in a psoceeding under section 10 of the I. D. Act or he may request the Tribunal to permit him to adduce additional evidence in case the domestic enquiry is found to have not been properly conducted. He may simultaneously adduce additional evidence to prove the fairness of the domestic enquiry and the case on merits. In the present case the 1st party management has simultaneously adduced additional evidence to prove the fairness of the domestic enquiry and the case on merits. If the domestic enquiry is not found fair and proper, then only the Tribunal can go into the evidence adduded on merit to decide about the justification of the action taken against the delinquent.

6. Issue No. I : A domestic enquiry is said to be fair and proper, if there is no violation of the principles of natural justice a prima facie a case is made out against the delinquent, and the action taken against him|her is bonafide.

7 Natural justice demands that the delinquent must be heard before any evidence order is passed against him In domestic enquiry, such hearing must be a personal hearing. In the present case the domestic enquiry was conducted in presence of the 2nd party workmen and her co-worker Sri D. D. Behera. The two witnesses examined on behalf of the management were

cross examined by the co-worker. The 2nd party workman also examined one witness on her behalf. So it cannot be said that the enquiry was conducted behind the back of the 2nd party workman.

8. Natural justice also demands that a copy of the findings of the enquiry committee should be given to the delinquent. In the present case it is found from the evidence of Ratan Ku. Das, Asst. Manager (Personnel) of the 1st party who has been examined as M.W. No. 1 before this tribunal that a copy of the findings of the enquiry committee was sent to the 2nd party workman by registered post.

9. Natural justice further demands that the E.O. must not be based against the delinquent. In the case at hand, there is nothing in the record to show that the E.O. had any bone to pick up with the 2nd party workman. The 2nd party workman also did not raise any objection against his appointment as E.O.

10. Furthermore, natural justice demands that the findings of the E.O. must be supported by reasons. In the present case the E.O. has given the reasons for the conclusion he arrived at. For all these reasons it cannot be said that there was violation of the principles of natural justice in conducting domestic enquiry, in the present case.

11. Now, it is to be seen whether there is a prima facie case against the 2nd party workman. In deciding whether there is a prima facie case against a delinquent, the Tribunal cannot sit in appeal over the findings of the E.O. It cannot also reappraise the evidence and hold the same as inadequate. It can only reject the application if there is no evidence to support the findings of the E.O., or if the evidence is such that no reasonable person would on its basis came to such a finding In this light it is to be seen whether there is a prima facie case against the 2nd party workman in this case.

12. The charge sheet has not been filed in this case. So the specific charge framed against the 2nd party workman is not known. However, it is found from Ext. 1 the enquiry report that the 2nd party workman was charged for un-authorised use of company's quarters on the allegations that she did not deliver physical possession of the quarters allotted in her favour, to the company after the cancellation of the allotment order and specific direction for such delivery and continued to remain in possession of that quarters. This is not sufficient to hold that a chargesheet under this light was sent to the 2nd party workman. Even if it is held that such a charge sheet was sent to the O.P., the management miserably failed to prove it, prima facie. Two witnesses were examined on behalf of the management before the E.O. Both of them have only deposed that the 2nd party workman allowed an outsider to stay in her quarters while she herself was staying in her own house. Neither of these witnesses deposed a single line with regard to the unauthorised occupation of the quarters in question by the 2nd party workman. So it is held that there is no prima facie case against the 2nd party workman.

13. Issue No. 2 & 3 : Now the case has to be decided on merits. Since the chargesheet has not been filed in this case, it can be presumed that because no charge was framed against the 2nd party workman for un-authorised occupation of the quarters so it could not be filed. At this steps it was submitted on behalf of the 1st party management that Ext. 7 the explanation furnished by the 2nd party workman showed that a charge sheet dated 21-5-87 was received by her. On perusal of Ext. 7 it is found that the 2nd party workman has given her explanation vide it to the allegation that she allowed outsiders to stay in the quarters allotted in her name. So it cannot be said that it is an explanation to unauthorised occupation of quarters. When no charge was framed against the 2nd party workman for unauthorised use of company's quarters, the case cannot stand against her, on merit also. So it is held that the action of the 1st party management in deducting Rs. 3333 from the salary of the 2nd party workman and not giving increment to her is not justified.

14. Therefore, the 1st party management is directed to return Rs. 3333 to the 2nd party workman alongwith the differential amount between which she actually received and which she would have received towards her salary had her basic pay not been reduced by one stage. The pay of the 2nd party workman shall also be regularised on the basis of this award. The award is to be complied within two months of publication of it in the official gazette.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1658.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै० एम० डी० खण्डेलवाल पुरनापानी लाईमस्टोन क्वारी के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-29012/65/94-आई०आर० (विविध)]

बी० एम० डैविड, डेस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1658.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. M. D. Khandelwal, Contractor, Purnapani Limestone & Dalomite Quarry, and their workman, which was received by the Central Government on 31-7-1998.

[No. L-29012/65/94-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL : ROURKELA

Industrial Dispute Case No. 55/97(C)

Dated the 19th May, 1998

Present :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN

M/s. M.D. Khandelwal, Contractor
Purnapani Limestone & Dolomite
Quarry of Raw Material Division
SAIL, PO : Purnapani, Distt. :
Sundergarh-770035 .. 1st party

AND

The Secretary,
Rourkela Shramik Sangh,
Purnapani Branch,
PO : Purnapani,
Distt. : Sundergarh-770035 .. IInd party

Appearance :

For the Ist party : None.

For the IInd party : None.

AWARD

The Govt. of India in Ministry of Labour, Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide reference No. L-29012/65/94 IR (Misc.) dated 16-12-95 for adjudication :

"Whether the action of M/s. M. D. Khandelwal, Contractor, Purnapani Limestone & Dolomite Quarry, Raw Material Division, SAIL P.O. : Purnapani, Distt. : Sundergarh, in terminating the services of Smt. Piyari Kandulna Smt. Sukhro Oram, Smt. Salmani Kandulna, Smt. Dhani Kandulna, and Smt. Mariam Kandulna from 1-1-93 is jusified? If not, to what relief the workmen are entitled to?"

2. The case was fixed on 8-5-98 for hearing. Since neither of the parties appeared before this Tribunal on that date, it can be presumed that, at present there is no dispute between them or they have amicably settled the dispute outside the Court in the mean time. Accordingly No Dispute Award is passed.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1659.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पुरनापानी लाईमस्टोन डैलामाईट क्वारी के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-29012/83/92-आई०आर० (विविध)]

बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1659.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Purnapani Limestone and Dolomite Quarry and their workman, which was received by the Central Government on 31-7-1998.

[No. L-29012/83/92-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF PRESIDING OFFICER : INDUSTRIAL TRIBUNAL : ROURKELA

Industrial Dispute Case No. 24/97 (21/93) (C)

Dated, the 18th June, 1998

Present :

Sri R. N. Biswal,LL.M.,
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN

The General Manager, Purnapani
Limestone & Dolomite Quarry of
Raw Material Division, SAIL,
Rourkela-II, Sundergarh ... Ist party

AND

The Secretary,
Rourkela Shramik Sangh,
Purnapani Branch,
P.O. : Purnapani, Sundergarh .. IInd party

Appearances :

For the 1st party : Sri R C. Tripathy, I. O.

For the IInd party : Sri A. K. Pandey, Secy.

AWARD

The Govt. of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide reference no. L-29012/83/92-IR(Misc.) dt. 14-6-93 for adjudication:

"Whether the action of the management of Purnapani Limestone & Dolomite Quarry of Raw Material Division, SAIL, Rourkela

not giving employment on compassionate ground to the dependants of Late D. Molana, who died on 4-8-1990 was justified? If not, to what relief the workman is entitled to?"

2. The case of the 2nd party-workman in short is that while his father Digambar Molana was working as a drill operator under the Ist party-management, on 3-8-90 at about 4 P.M. he suffered from heart attack on the duty spot and was admitted to I.G.H. Rourkela, where he expired on 5-8-90 at about 2.30 A.M. By the time of his death the deceased had already served for more than 20 years of service under the Ist party.

3. The 1st party management is an unit of R.S.P. As per the circular dt. 14-10-80 issued by R.S.P. if a workman fell sick in the shop floor and after due treatment died, one of his dependants would be appointed in the company on compassionate ground. But this opportunity was denied to the 2nd party-workman. So the dispute leading to this reference.

4. The 1st party-management admitted that Digambar Molana fell sick in the shop floor while undergoing treatment at I.G.H. Rourkela, he died on 5-8-90. But as per clause 4 of the circular dt. 14-10-80 of R.S.P. if an employee fell sick in the shop floor & after being removed to the hospital was declared dead or died after treatment for some time, his case would fall under 3rd priority for compassionate appointment of his dependant. The 3rd priority stipulates that by the time of his death the deceased must have served for at least ten years under the company. But in the present case Digambar Molana joined under the Ist party establishment on 23-10-1984 and had hardly rendered six years of service when he died. So the 2nd party workman is not entitled to be employed under the 1st party establishment on compassionate ground.

5. On the basis of the above pleadings of the parties, the following issues were framed :—

(i) Whether the action of the management of Purnapani Limestone & Dolomite Quarry of Raw Material Division, SAIL, Rourkela in not giving employment on compassionate ground to the dependants of Late D Molana who died on 4-8-1990 was justified?

(ii) To what relief, if any, the workman is entitled to?

6. The parties examined only one witness each to establish their respective cases.

7. Issue No. I :—It is admitted by the Ist party-management that while on duty Late Digambar Molana fell ill on 3-8-90 & ultimately died in I.G.H., Rourkela on 5-8-90. It transpires from the evidence of W.W. No. 1 (the 2nd party workman) that his father served under the Ist party for 16 years. As stated earlier in his statement of claim, the 2nd party workman had claimed that his father worked under the Ist party for 20 years. So the evidence of the 2nd party-workman contradicts his pleading with regard to period of service rendered by his father under the 1st party-management. W. W. No. 1 further deposed that his father worked as drill operator under Sundargarh Mining Labour Contractor Coop. Society for 11 years, and after his service was regularised he joined under the Ist party on 23-10-84. Except the bare testimony of this witness that his father served under Sundargarh Mining Labour Contractor Coop. Society for 11 years, there is no any evidence much less documentary evidence. So it casts doubt whether the deceased in fact had served 11 years in that society.

8. It is also the case of the 1st party management that the deceased joined under it on 23-10-84. The learned authorised representative of the 2nd party submitted that the period of service rendered by Late Digambar Molana to Sundargarh Mining Labour Contractor Coop. Society would also be deemed to have rendered under the Ist party. The very name "Sundargarh Mining Labour Contractor Coop. Society" shows that it is a society of the labourers which is altogether a separate establishment from the Ist party. So even if it is believed that the deceased worked for 11 years under Sundargarh Mining Labour Contractor Coop. Society it would not be deemed that he worked for this period under the Ist party management. As such it is held that the father of the 2nd party worked under the Ist party from 23-10-84 to 5-8-90 i.e. less than six years.

9. It transpires from the evidence of M.W. No. 1 that originally Purnapani Limestone & Dolomite Quarry was under the control of SAIL, R.S.P. It was transferred to Raw Material Division on 1-5-90. Prior to formation of Raw Material Division, SAIL, Rourkela, the workmen working under Purnapani Limestone & Dolomite Quarry were covered under the circulars & guidelines of R.S.P. There was a circular of R.S.P. dt. 1-9-75 where provision was made for providing employment to the dependants of ex-employee of R.S.P. The circular has been marked Ext. A. As per this circular if after serving for 10 years in the minimum an employee dies then one of his dependants would be rehabilitated. Again there was another circular on 14-10-80, Ext. B, wherein it was provided that if an employee suddenly fell sick at the shop floor and after being removed to the hospital was declared dead or died after treatment for some time in the hospital, his case would fall in the 3rd priority for compassionate appointment. The 3rd priority of Ext. A shows that for consideration of giving employment on compassionate ground to a dependant of an ex-employee, the employee must have rendered service for 10 years, if he died a natural death. In the present case since the deceased Digambar Molana had not completed 10 years of service under the Ist party, his dependant son, the 2nd party workman cannot be rehabilitated in service on compassionate ground. So the action of the management in not giving employment on compassionate ground to the dependant of Late Digambar Molana is justified.

10. Issue No. II :—In view of my foregoing findings the 2nd party workman is not entitled to get any relief.

Accordingly the Award is passed. The parties to bear their respective cost.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1660—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साईलजोरा केलीमती मैंगनाईज माइन्स के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल० 27012/1/97-आई०आर० (.बविध)]

बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1660.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Siljora Kalimati Mn. Mines and their workman, which was received by the Central Government on 31-7-1998.

[No. L-27012/1/97-IR (Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL ROURKELA

Industrial Dispute Case No. 157/97 (C)

Dated, the 19th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer,
Industiral Tribunal,
Rourkela.

BETWEEN

The Agent Siljora Kalimati
Mn. Mines of M/s. M. L. Rungta,
P.O. Barajamda, Distt. Singhbhum
(W. Bihar) .1st Party

AND

Shri Manoj Kumar Kishan
At/P.O. Siljora, Via Joda
Distt. Keonjhar ..2nd Party

APPEARANCE :

For the Ist Party—Sri R. Agarwal Dy. Manager (Personnel)

For the IInd Party—In person.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-sectin 2-A of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute for adjudication vide No. L-27012/1/97-IR (Misc.) dated 11-4-97.

"Whether the termination of Shri Manoj Kumar Kishan, ex-Store Keeper, w.e.f. 31-1-96 by the management of Siljora Kalimati Mn. Mines of M/s. M. L. Rungta is justified ? If not, to what relief the workman is entitled to ?"

2. In this case, the representatives of both the parties by filing a joint petition along with a memorandum of settlement drawn-up in Form 'H' pray to pass an award in terms thereof. The terms of the settlement are read over and explained to the parties to which they admit to be true and correct. The terms of the settlement being fair and Award is passed in terms thereof which do form part of the Award.

R. N. BISWAL, Presiding Officer

FORM H

Rule 58

Memorandum of Settlement

Industiral Dispute Case No. 157/97 (C)

M/s. Mangilall Rungta,
Siljora Kalimati Manganese Mines,
At/P.O. Siljora, Distt. Keonjhar.

Represented by Sri Ramu Agrawal,
Deputy Manager (Personnel)
M/s. Mangilall Rungta ..Employer, 1st Party

Sri Manoj Kumar Kishan,

Represented by

Sri Manoj Kumar Kishan ..Workman, 2nd Party

1. That the apprenticeship of the 2nd party was dscontinued with effect from 31st January, 1996. After such discontinuance the 2nd party raised an industrial dispute with claim for reinstatement with full back wages. On failure of conciliation the matter has been referred to the Hon'ble Industrial Tribunal Rourkela for adjudication and the said Industral Dispute between M/s. Mangilall Rungta, 1st party and Sri Manoj Kumar Kishan 2nd party has been numbered as I. D. Case No. 157/97 (C).

2. That both the parties have failed their statement of claims and written statement respectively. That in the meantime both the parties have been prolonged and protracted discussion in cordial atmosphere to avoid bitterness and bickering in day to day industrial relation. That the 2nd party workman without any pressure or influence from any body, on his own volition agreed to compromise the dispute and the 1st party having appreciated the 2nd party's point of view, it is hereby mutually agreed to make a compromise. Finally it was decided to bring about a settlement of differences by mutual concession under the following terms and conditions.

TERMS OF SETTLEMENT

(i) That the 2nd party shall be paid a sum of Rs. 12,000 (Rupees Twelve thousand only) by the 1st party as exgratia on or before 15-5-1998 in the form of Demand Draft. The amount so paid as exgratia shall not be taken into account or be calculated for any other purpose.

(ii) That the 2nd party at the time of discontinuance of his apprenticeship was an apprentice without any regular designation. As he cannot be retained as an apprentice any more he shall be reinstated with effect from 17-5-1998 at Siljora Kalimati Manganese Mines in a regular designation of Store Man at a pay of Rs. 1250 per mensum which is higher than his earlier pay of Rs 900 p.m. with continuity of service.

(iii) That the period from 31-1-1996 till the date of reinstatement shall be treated as dies non.

(iv) That the Industrial Dispute Case No. 157/97 (C) having been compromised the 2nd party shall not raise or cause to be raised any dispute or claim any amount in any forum on the present issue.

(v) That it is agreed that a prayer shall be made jointly before the Hon'ble Presiding Officer, Industrial Tribunal, Rourkela to be kind enough to allow the case to be compromised in terms of the present settlement.

Signature of Parties

(1) (RAMU AGRAWAL) Employer, 1st Party

(2) (MANOJ KUMAR KISAN) Workman, 2nd Party

Witnesses

(1) Name—Sri Prafulla Kumar Sen
Designation—Assistant Manager (Personnel)
Address—M/s. Mangilall Rungta,
At/P.O. Chaibasa, Distt. Singhbhum.
Signature—Sd/-

(2) Name—Sri Biranchi Knillar
Address—At/P.O. Guruda,
Distt. Keonjhar.
Signature—Sd/-

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1661.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-26012/35/96-आई०आर० (विविध)]

बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1661.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the ward of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. TISCO Ltd. and their workman, which was received by the Central Government on 31-7-1998.

[No. L-26012/35/96-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL ROURKELA

Industrial Dispute Case No. 132/97 (C)

Dated, the 26th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer
Industrial Tribunal,
Rourkela.

BETWEEN

M/s. TISCO Limited Jamshedpur ..1st Party

AND

Shri Arna Naik
P.O. Amgova, Via Kutra,
Distt. Sundergarh ..IInd Party

APPEARANCE :

For the Ist Party—Sri M. Z. M. Ansari Manager (Personnel)

For the IInd Party—In person.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947 have referred the following disputes for adjudication vide No. L-26012/35/96-IR (Misc.) dated 13-11-96 :

"Whether the action of the management of Geological Department, T.I.S.Co Ltd. Jamshedpur, Distt. Singhbhum (Bihar) in terminating the services of Sh. Arna Naik as Mazdoor w.e.f. December. 91 is justified ? If not, what relief the workman is entitled to ?"

2. In this case, the representatives of both the parties by filing a joint petition alongwith a memorandum of settlement drawn-up in Form 'H' pray to pass an award in terms thereof. The terms of the settlement are read over and explained to the parties to which they admit to be true and correct. The terms of the settlement being fair an Award is passed in terms thereof which do form part of the Award.

R. N. BISWAL, Presiding Officer

FORM H

UNDER RULE 58 OF THE INDUSTRIAL DISPUTES (CENTRAL) RULES, 1957

MEMORANDUM OF SETTLEMENT

Representing Employer :

The Supdt. Geological Department, . . . First Party Management

The Tata Iron and Steel Co. Ltd.,
At/P.O. Jamsehedpur,
Distt. Singhbhum (East),
Bihar.

Representing Workman :

Shri Arna Naik, Second Party Workman
P.O. Amgova,
Via : Kutra,
Distt. Sundergarh, Orissa.

SHORT RECITAL OF THE CASE

The following industrial dispute has been referred to the Hon'ble Industrial Tribunal, by the Government of India vide its Order No. L-26012/35/96-IR (Misc.) dated 13-11-1996 :

"Whether the action of the management of Geological Department of Tata Iron and Steel Co. Limited, Jamshedpur, Distt. Singhbhum (Bihar) in terminating the services of Shri Arna Naik as Mazdoor with effect from December, 91 is justified ? If not, what relief the workman is entitled to ?"

The said reftrence has been registered as Industrial Dispute Case No. 132 of 1997 (C) in the file of the learned Industrial Tribunal, Rourkela, and is pending adjudication.

Since the workman has been self-employed and is not interested to fight litigation, on his approach to settle the said disptue amicably on some financial terms, the parties had discussions and have been able to sort out the dispute to the mutual acceptance of both sides.

Accordingly, the terms of settlement as understood and agreed to by and between the parties are set out below :

TERMS OF SETTLEMENT

1. It is agreed that the Management will pay to Shri Arna Naik a lumpsum amount of Rs. 10,000 (Rupees Ten thousand) only in full and final settlement of the disptue as above quoted which is pending before the Hon'ble Industrial Tribunal. The Management has agreed to pay the said amount in cash within a week thereof.

2. There shall be no further claim by Shri Arna Naik nor he shall be entitled for any other payment or benefits, or privileges whatsoever, financial or otherwise, in view of this settlement

3. Both parties agree that on the Management making the payment as aboveaid and the workman on receiving such payment the industrial dispute pending before the Hon'ble Industrial Tribunal, Rourkela, in Industrial Dispute Case No. 132/97 (Central) will stand fully and finally resolved.

4. Both the parties accepted the terms of compromise, as set forth above as amicable, fair and final.

5. In view of this amicable settlement, it is agreed and undertaken by the parties that since the subject matter of the disptuo in Industrial Dispute Case No. 132/97 (C) has stood composed/compromised by this settlement, the parties will jointly approach the Hon'ble Industrial Tribunal for passing an award in terms of this settlement.

Signature of the First Party

Management :

(N. Panigrahi)

Witnesses with address :

1. (R. N. Mishra)
Gomerdih Dolomite Quarry
At/P.O. Tunmush
Distt. Sundergarh.

2. Sd/-

Gomardih Dolomite Quarry
At/P.O. Tunmush
Distt. Sundergarh.

Signature of Second Party :
(Arna Naik)

Witnesses with address :

1. Sd/-

General Secretary
Gomardih Dolomite Quarry
Mazdoor Union Gomardih

2. Sd/-

(C. R. Mahapatra)
Gomardih

Rourkela,
Dated the 23rd day of April, 1998.

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-26012/33/96-आई०आर० (विविध)]

बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 31st July, 1998

S. O. 1662.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M|s. TISCO LTD., and their workman, which was received by the Central Government on the 31-7-98.

[No. L-26012/33/96-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER: INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 133/97 (C)

Dated, the 27th May, 1998

Present :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN

M|s. TISCO Limited Jamshedpur .. Ist party

AND

Sri Chakradhar Sahoo,
At|PO : Khatkurbahal,
Distt. : Sundergarh .. IInd party

Appearance :

For the Ist party : M.Z.M. Ansari Manager (Personnal).

For the IInd party : In person.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 have referred the following disputes for adjudication vide No. L-26012/33/96-JR (Misc.) dt. 13-11-96 :

"Whether the action of the management of Geological Department Tata Iron & Steel Co. Ltd. Jamshedpur, Distt. : Singhbhum in terminating the services of Shri Chakradhar Sahoo as mazdoor w.e.f. December, 91 is justified ? If not, what relief the workman is entitled to?"

2. In this case, the representatives of both the parties by filing a joint petition along with a memorandum of settlement drawn-up in Form 'H' pray to pass an award in terms thereof. The terms of the settlement are read over and explained to the parties to which they admit to be true and correct. The terms of the settlement being fair an Award is passed in terms thereof which do form part of the Award.

R. N. BISWAL, Presiding Officer

FORM II

UNDER RULE 58 OF THE INDUSTRIAL DISPUTES (CENTRAL) RULES, 1957

MEMORANDUM OF SETTLEMENT

Representing Employer :

The Supdt. Geological Department,
The Tata Iron & Steel Co. Ltd.,
AT|PO : Jamshedpur,
Distt. : Singhbhum (East),
Bihar. .. First Party Management

Representing Workman :

Shri Chakradhar Sahoo,
AT & PO : Khatkuribahal,
Distt. : Sundargarh, Orissa .. Second Party Workman

SHORT RECITAL OF THE CASE :

The following industrial dispute has been referred to the Hon'ble Industrial Tribunal, by the Govt. of India vide its Order No. L-26012|33-96-IR (Misc.) dated 13-11-1996 :

"Whether the action of the management of Geological Department of Tata Iron & Steel Co. Limited, Jamshedpur, Distt. : Singhbhum (Bihar) in terminating the services of Shri Chakradhar Sahoo as Mazdoor with effect from December '91 is justified ? If not, what relief the workman is entitled to ?"

The said reference has been registered as Industrial Dispute Case No. 133 of 1997 (C) in the file of the learned Industrial Tribunal, Rourkela, and is pending adjudication.

Since the workman has been self-employed and is not interested to fight litigation, on his approach to settle the said dispute amicably on some financial terms, the parties had discussions and have been able to sort out the dispute to the mutual acceptance of both sides.

Accordingly, the terms of settlement as understood and agreed to by and between the parties are set out below :

TERMS OF SETTLEMENT :

1. It is agreed that the Management will pay to Shri Chakradhar Sahoo a lumpsum amount of Rs. 10,000|- (Rupees Ten thousand) only in full and final settlement of the dispute as above quoted which is pending before the Hon'ble Industrial Tribunal. The Management has agreed to pay the said amount in cash within a weak thereof.

2. There shall be no further claim by Shri Chakradhar Sahoo nor he shall be entitled for any other payment or benefits or privileges whatsoever, financial or otherwise, in view of this settlement.

3. Both parties agree that on the Management making the payment as abovesaid and the workmen on receiving such payment the Industrial Dispute pending before the Hon'ble Industrial Tribunal, Rourkela, in Industrial Dispute Case No. 133|97 (Central) will stand fully and finally resolved.

4. Both the parties accepted the terms of compromise, as set forth above as amicable fair and final.

5. In view of this amicable settlement, it is agreed and undertaken by the parties that since the subject matter of the dispute in Industrial Dispute Case No. 133|97(C) has stood composed|compromised, by this settlement, the parties will jointly approach the Hon'ble Industrial Tribunal for passing an award in terms of this settlement.

Signature of the First Party Management
(N. Panigrahi)
Signature of Second Party
Witnesses with address :

1. (R. N. Mishra)
Gomardih Dolomite Quarry
At/P. O.—Tun Mush
Distt. Sundergarh.

2. ( )
Gomardih Dolomite Quarry
At/P. O.- Tunmusha,
Distt.—Sundergarh.

Witness with address :
(Chakradhar Sahoo)

1. Borilo Kisham
General Secretary,
Gomardih Dolomite Quarry,
Mazdoor Union.

2. (C. R. Mohapatna)
Gomardih

Rourkela,
Dated the 23rd day of April, 1998.

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साईलजोरा केलाईमती मग्नाईस माईन्स के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राऊरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-27012/5/96-आई०आर० (विविध)]
बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1663.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Siljora Kalimati Mn. Mines and their workman, which was received by the Central Government on the 31-7-98.

[No. L-27012|5|96-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL: ROURKELA

Industrial Dispute Case No. 128|97(C)

Dated, the 27th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch).
Presiding Officer.
Industrial Tribunal,
Rourkela.

BETWEEN

The Agent, Siljora Kalimati,
Mn. Mines of M|s. M. L. Rungta,
At : PO : Siljora,
Distt. : Keonjhar .. Ist party

AND

Shri Krishna Thapa,
C|o Bahadur Thapa,
At|PO : Siljora,
Via : Joda, Distt : Keonjhar ..IInd party.

APPEARANCE :

For the Ist party : Shri R. Agarwal Dy. Manager (Personnel).
For the IInd party : In person.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-section (2A) of section, 10 of the Industrial Dispute, Act, 1947 have referred the following dispute for adjudication vide No. L-27012|5|96-IR (Misc.) dated 31-10-96.

"Whether the termination of workman Sri Krishna Thapa, Driver by the management of Siljora Kalimati Manganese Mines of M|s. M. L. Rungta, PO : Siljora, D'st : Keonjhar w.e.f. 2-1-94 is legal and justified ? If not, what relief the workman is entitled to ?"

2. In this case, the representatives of both the parties by filing a joint petition alongwith a memorandum of settlement drawn-up in Form 'H' pray to pass an award in terms thereof. The terms of the settlement are read over and explained to the parties to which they admit to be true and correct. The terms of the settlement being fair an Award is passed in terms thereof which do form part of the Award.

R. N. BISWAL, Presiding Officer

FORM—H RULE—58

MEMORANDUM OF SETTLEMENT

INDUSTRIAL DISPUTE CASE NO. 128|97(C)

M|s. Mangilall Rungta,
Siljora1Kalimati Manganese Mines,
At/P.O.– Siljora, Distt. : Keonjhar.

Shri Devi Ram Ojha,
Agent,
M|s. Mangilall Rungta .. Employer, 1st party

Shri Krishna Thapa,
Driver,
Represented by Sri Krishna Thapa .. Workman, 2nd party

1. That the 2nd party has raised an Industrial Dispute that his services were illegally terminated with effect from 2-1-94 and that he should be reinstated with full back wages. As the conciliation failed the matter has been referred to the Hon'ble Industrial Tribunal Rourkela for adjudication. The instant Industrial Dispute between M|s. Mangilall Rungta, Employer, 1st party and Sri Krishna Thapa 2nd party has been numbered as Industrial Dispute Case No. 128|97(C).

2. That the 2nd party has filed statement of claims and the 1st party written statement. That in the meantime both the parties have had prolonged and protracted discussion in cordial atmosphere to avoid bitterness and bickering in day to day industrial relation. That the 2nd party workman without any pressure or influence from any body, on his own volition agreed to compromise the dispute and the 1st party having appreciated the 2nd party's point of view, it is mutually agreed to make a compromise. Finally it was decided to bring about a settlement of differences by mutual concession under the following terms and conditions.

3. TERMS OF SETTLEMENT :

(i) That the 2nd party workman shall be paid a sum of Rs. 14,000|- (Rupees Fourteen thousand) only by the 1st party as exgratia by Demand Draft on or before 22nd May' 98. The amount of money so paid, as exgratia shall not be taken into account or be calculated for any other purpose.

(ii) Re-instatement of the 2nd party at Siljora-Kalimati Mn. Mines w.e.f. from 24-5-98 as a driver of skilled category @ Rs. 57.64 per day as per the Notification No. 1(10)|98-IS II dt. 17-3-98 by the Govt. of India, Ministry of Labour under the Minimum wages Act, 1948.

(iii) That the period from 2-1-1994 till the date of reinstatement shall be treated as dies non.

(iv) That the Industrial Dispute Case No. 128/97(C) having been compromised the 2nd party shall not raise or cause to be raised any dispute or claim any amount in any forum on the present issue.

(v) That it is agreed that a prayer shall be made jointly before the Hon'ble Presiding Officer, Industrial Tribunal Rourkela to be kind enough to allow the case to be compromised in terms of the present settlement.

Signature of Parties

(1) Devi Ram Ojha .. Employer, 1st party
(2) Krishna Thapa .. Workman, 2nd party

WITNESSES

1. Name : Shri Ramu Agarwal,
Designation : Dy. Manager (Personnel),
Address : M/s. Mangilall Rungta,
At/P.O. Barajamda, Distt. : Singhbhum.

2. Name : Shri Biranchi Khillar,
Address : At/PO Guruda, Distt. Keonjhar.

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिसरा स्टोन लाईम कं० लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-29012/69/96-आई०आर० (विविध)]
बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1664.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bisra Stone Lime Co. Ltd., and their workman, which was received by the Central Government on 31-7-98.

[No. L-29012/69/96-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 152/97(C)

Dated, the 28th May, 1998

PRESENT:

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer
Industrial Tribunal,
Rourkela.

BETWEEN

The General Manager
Bisra Stone Lime Co. Ltd.
PO : Birmitrapur,
Dist : Sundargarh ..1st party

AND

The Secretary
Gangpur Labour Union
PO : Birmitrapur,
Dist : Sundergarh ..IInd party.

APPEARANCE:

For the 1st party—Sri B. C. Swain
Asst. Manager (P. & A.)

For the IInd party—Sri B. Panigrahi
Asst. Secretary.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 have referred the following disputes for adiudication vide No. L-29012/69/96-IR(Misc.) dt. 24-2-97.

"Whether the termination of Shri Gajendra Haripal Miner from service w.e.f. 3-8-93 by the management of Bisra Stone Lime Co. Ltd. PO: Birmitrapur, Dist : Sundargarh is justified and proper? If not, to what relief the workman is entitled?"

2. In this case, the representatives of both the parties by filing a joint petition along with a memorandum of settlement drawn-up in Form 'H' pray to pass an award in terms thereof. The terms of the settlement are read over and explained to the parties to which they admit to be true and correct. The terms of the settlement being fair an Award is passed in terms thereof which do form part of the Award.

R. N. BISWAL, Presiding Officer

MEMORANDUM OF BIPARTITE SETTLEMENT BETWEEN THE MANAGEMENT OF M/S BISRA STONE LIME COMPANY LIMITED, BIRMITRAPUR AND THEIR WORKMAN REPRESENTED BY THE GANGPUR LABOUR UNION, BIRMITRAPUR ON DATED

30TH JANUARY 1998

REPRESENTING MANAGEMENT

01. Mr. S. K Patnaik General Manager.
02. Mrs. L. Palai, Asst. Supdt. (Pers.)
03. Mr. B. C. Swain, Asst. Manager (P & A)

REPRESENTING UNION

01. Shri Hiralal Haripal, W/President
02. Shri K. N. Pathak, Secretary
03. Shri B. Panigrahi, Asst. Secretary.

SHORT RECITAL OF CASE

The Secretary Gangpur Labour Union, Birmitrapur in their letter No. GLU/4-1/35 dtd. 4th March 1996 raised an Industrial Dispute alleging retusal of employment to Shri Gajendra Maripal, E.P.F. No. 24279 of Kaplas Mines by the management of M/s Bisra Stone Lime Company Limited, Birmitrapur. It is further stated by the representatives of the workman that Shri Gajendra Maripal was arrested by the Birmitrapur Police in Case No. 302/376/201(IPC) and was forwarded to jail as under trial prisoner. Shri Haripal while in jail applied to the management apprising the whole situation and non-grant of bail requesting for grant of leave till his Bail Order. After he got acquitted from the criminal charges, he made a written representation requesting the management to reinstate him in his service as he was honourably acquitted of all criminal charges, which was falsely made against him alongwith copy of the judgement awarded by the Hon'ble Additional Session Judge, Rourkela on dtd. 18-09-1995. The management refused to concede to the request of the union. Therefore, the union raised an Industrial Dispute before the Asst. Labour Comsioner (Central), Rourkela, which was taken-up for conciliation by the Assistant Labour Commissioner (Central), Rourkela in his office to reach an amicabel settlement. Since the management did not agree for reinstatement of Shri Gajendra Haripal during the conciliation proceedings, the conciliation ended in failure and thereafter now the dispute has been referred to Industrial Tribunal, Rourkela for adjudication, which is still pending for disposal.

The Gangpur Labour Union, Birmitrapur again had approached vide its letter No. GLU/02/184 dtd. 23-10-1997 to the management for amicable bilateral settlement of the case in order to avoid unnecessary litigation on the lines of same cases in the past of similar nature. After protracted discussion, the parties agreed to the following terms of settlement to resolve the dispute amicably.

TERMS OF SETTLEMENT

01. The management agreed to reinstate Shri Gajendra Haripal, E.P.F. No. 24279 of Kaplas Mines in his service on compassionate ground with immediate effect with continuity of the service.

02. The period of absence of Shri Gajendra Haripal till the date of his joining will be treated as leave without wages.

03. By this settlement, the dispute raised by the Gangpur Labour Union alleging retusal of employment to Shri Gajendra Haripal, E.P.F. No. 24279, Kaplas Mines is treated to have been fully and finally settled. Thus, neither the union nor the workman shall raise any dispute before any authority in this regard in future.

04. In view of the settlement bilaterally and amicably arrived at by the 1st Party, management of M/s. B.S.L. Co. Ltd; Birmitrapur and the workman represented by the Gangpur Labour Union, Birmitrapur, it is agreed to file the said settlement before the Hon'ble Industrial Tribunal, Rourkela for passing it as an award in I.D. Case No. 152/97(C) in the matter of Shri Gajendra Haripal.

Sd./-
(S. K. Patnaik)
General Manager

Sd./-
(Mrs. L. Palai)
Asst. Supdt. (Pers.)

Sd./-
(B. C. Swaiu)
Asst. Manager (F&A)

Sd./-
(Hiralal Haripal)
Working President, GLU

Sd./-
(K. N. Pathak)
Secretary, GLU

Sd./-
(B. Panigrahi)
Asst. Secretary, GLU

WITNESS:

(01) Shabbir Hassan
Clerk-cum-Typiest, General Office

(02) Marshal S Surin
Clerk, General Office

dt. 28-5-98

Presiding Officer
Industrial Tribunal
Rourkela

नई दिल्ली, 31 जुलाई, 1998

का०आ० 1665.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साईलओरा केलामती मग्नाईज माईन्स के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-98 को प्राप्त हुआ था ।

[सं० एल-26012/40/96-आई०आर० (विविध)]

बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 31st July, 1998

S.O. 1665.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Siljera Kalimati Mn. Mines and their workman, which was received by the Central Government on 31-7-98.

[No. L-26012/40/96-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 146/97 (C)

Dated, the 19th May, 1998

PRESENT :

Shri R. N. Biswal, LL. M.,
(O.S.J.S. Sr. Branch).
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN :

M|s. Siljora, Kalimati Mn.,
Mines of M. L. Rungta,
Keonjhar. .. Ist party.

AND

Sri Jega Triya through,
General Secretary,
Orissa Mining Workers Union,
PO: Guruda, Dist: Keonjhar. .. IInd party.

APPEARANCE :

For the Ist party—Sri R. Agrawal, Dy. Manager (Personnel).

For the IInd party—Gen. Secretary, O.M.W.U.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 have referred the following disputes for adjudication vide No. L-26012|40|96-IR(M) dated 17-1-97.

"Whether the action of the management of Siljora Kalimati Mn. Mines of Mds. M. L. Rungta, P.O. Siljora Dist. Keonjhar terminating the services of Sri Jega Triya w.e.f. 25-1-1995 is legal and justified, if not what relief the workman is entitled to ?"

2. In this case, the representatives of both the parties by filing a joint petition alongwith memorandum of settlement drawn-up in Form 'H' pray to pass an award in terms thereof. The terms of the settlement are read over and explained to the parties to which they admit to be true and correct. The terms of the settlement being fair an Award is passed in terms thereof which do form part of the Award.

R. N. BISWAL, Presiding Officer

FORM—H

Rule—58

Industrial Dispute (Central) Rules
Memorandum of Settlement

INDUSTRIAL DISPUTE CASE NO. 146|97 (C)

M|s. Mangilal Rungta,
Siljora Kalimati Manganese Mines,

At|PO: Siljora, Dist. Keonjhar.

Represented by Sri Ramu Agrawal,
Deputy Manager (Personnel),
M|s. Mangilall Rungta. .. Employer 1st Party.

Sri Jega Tiria,
Represented by Sri Jega Tiria,
Workman. .. 2nd party.

1. That the services of the 2nd party were terminated with effect from 25-1-1995 on account of unauthorised absence from duty. After termination the 2nd party has raised an Industrial Dispute with claim for reinstatement with full back wages and the conciliation having failed the matter has been referred to the Hon'ble Industrial Tribunal, Rourkela for adjudication. The instant Industrial Dispute between M|s. Magilall Rungta 1st party Employer and Sri Jega Tiria has been numbered as I.D. Case No. 146|97(C).

2. That the 2nd party has filed statement of claims and the 1st party written statement. That in the meantime both the parties have had prolonged and protracted discussion in cordial atmosphere to avoid bitterness and bickering in day to day industrial relation. That the 2nd party workman without any pressure or influence from any body, on his own volition agreed to compromise the dispute and the 1st party having appreciated the 2nd party's point of view, it is hereby mutually agreed to make a compromise. Finally it was decided to bring about a settlement of differences by mutual concession under the following terms and conditions.

3. Terms of Settlement.—(i) That the 2nd party workman shall be paid a sum of Rs. 19,000|- (Rupees Nineteen thousand) only by the 1st party as exgratia by Demand Draft on or before 15th May, 1998. The amount of money so paid, as exgratia shall not be taken into account or be calculated for any other purpose.

(ii) Re-instatement of 2nd party at Silijora-Kalimati Manganese Mines with effect from 17-5-1998 with continuity of service.

(iii) That the period from 25-1-1995 till the date of reinstatement shall be treated as dies non.

(iv) That the Industrial Dispute Case No. 146|97(C) having been compromised the 2nd party shall not raise or cause to be raised any dispute or claim any more amount in any forum on the present issue.

(v) That it is agreed that a prayer shall be made jointly before the Hon'ble Presiding Officer, Industrial Tribunal Rourkela to be kind enough to

allow the case to be compromised in terms of the present settlement.

Signature of parties

(1) RAMU AGRAWAL
Employer 1st party

(2) JEGA TIRIA
Workman 2nd party.

Witnesses

(1) Name—Sri Prafulla Kumar Sen,
Designation—Assistant Manager, (Personnel)
Address—M|s. Mangilall Rungta,
At P.O. Chaibasa, Dist. Singhbhum (W).
Signature— Sd/-

(2) Name—Sri Biranchi Khillar,
Address—At|P.O. Gurda,
Dist.—Keonjhar.
Signature— Sd/-

नई दिल्ली, 5 अगस्त, 1998

का०आ० 1666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस्सल माइनिंग एण्ड इण्डस्ट्रीज लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-98 को प्राप्त हुआ था ।

[सं० एल-26012/5/94-आई०आर० (विविध)]
बी० एम० डेविड, डैस्क अधिकारी

New Delhi, the 5th August, 1998

S.O. 1666.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M|s. Essel Mining & Industries Ltd. and their workman, which was received by the Central Government on the 5-8-98.

[No. L-26012|5|94-IR (Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 59|97 (C)

Dated, the 29th June, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN :

The Sr. Vice President (Mines)
Sarkunda Mines,
M|s. Essel Mining & Industries Ltd
P.O. Barbil-758001
Dist. Keonjhar .. Ist party

AND

Sri Barnabas Dang &
Sri Sonika Haro through
The General Secretary
North Orissa Workers
Union .. IInd patry

APPEARANCE :

For the Ist party—Sri Niraj Agrawal Presiding Officer

For the IInd party—Sri B. S. Pati, General Secretary.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 have referred the following disputes for adjudication vide No. L-26012|5|94-IR (Misc.), dated 12-1-95:

"Whether the action of the management of Sarkunda Manganese Mines of M|s. Essel Mining and Industries Ltd. in dismissing Shri Senika Haro and Shri Barnbas Dang w.e.f. 2-4-93 is justified ? If not, to what relief the workman are entitled ?"

2. The case of the 2nd party workmen as per their statement of claim, in short is that they were working under the Ist party management as choukidars since 1982. In the month of Dec. '92, each of them was issued with a Chargesheet on the allegation that due to their negligence in duty,in between 10 P.M. of 30-11-92 to 6 A.M. dated 1-12-92, 4571 pieces of detonators, some copper strips and lightening arrestors were stolen away from the magazine which they were guarding. Subsequently an enquiry was held against them for this charges. In course of enquiry they stated that on the night of occurence at about 11 P.M. some miscreants caught hold of them and forcibly made them to small something for which they lost their senses and could not know about the incident. When they stated this fact to the Manager he asked them to put their signature|thumb impression on a document written in English. Being asked

about the purpose of taking their signature|thumb impression on the documents, the Manageer told that the matter would be reported to the Police to save them. So on good faith Barnabas Dang put his signature and Sonika Haro his thumb impression on the document.

3. It is the further case of the 2nd party workmen that the E.O. after discussing with the Manager of the Ist pary management prepared some papers and took their signature|thumb impression on the same. When they asked the E.O. to record the proceeding either in Oriya or Hindi he turned a deaf ear to it. He also did not explain the contents of the proceeding in Oriya or Hindi. After conclusion of the Domestic Enquiry the Ist party Management gave them second show cause notice. Accordingly they submited their explanations separately on 22-3-93. But without considering the facts and circumstances of the case, the Ist party management dismissed them from service w.e.f. 2-4-93.

4. As against this, the Ist party management contended that on the night of occurrence when the 2nd party workmen were engaged in guarding the magazine of Surkunda mines because of their negligence some detonators copper strips and lightening arrestors were stolen away from it. So the Manager of the Ist party issued chargesheet to both the 2nd party workmen separately. In their explanation, they submitted that in the night of occurrence they were awake upto 11 P.M. and thereafter both of them fell asleep. On the next date at about 6 A.M. when they woke up, after being called by the Kanhu Naik and T. J. Mohonto they found the door of the magazine in broken state. They also found that some detonators, copper strips and lightening arrestors were missing therefrom. As the explanation submitted by them were not found satisfactory, the management constituted a domestic enquiry to enquire into the charge. The E. O. held the enquiry on 4-2-93 at Surkunda Mines in presence of 2nd party workmen and their co-worker Trenjit Mohanto. The 2nd party workmen were afforded full opportunity to establish their stand. The enquiry was conducted impartially in accordance with the principles of natural justice. After conclusion of the enquiry, the E.O. submitted its report to the management holding the charge as established.

5. On receipt of the report of enquiry, the management furnished copies of it to the 2nd party workmen to facilitate them for making representation if any. The copies of enquiry proceedings along with the exhibits were also furnished to them. Then the workmen submitted their representations. After going through the enquiry report and the representations made by the 2nd party workmen the Mines Manager of the Ist party concurred with the findings of the E.O. and dismissed the 2nd party workmen from the services of the company with effect from 2-4-93.

6. The Ist party management denied the allegation of the 2nd party workmen, that the copies of the enquiry proceedings were not furnished to them. It also denied the allegation that the Manager managed to obtain their signature|thumb impression on some documents written in English without explaining them the contents thereof. The Ist party management further denied the allegation that the 2nd party workmen stated before the manager and E.O. that in the night of occurrence some miscreants caught hold of them and forcibly made them to smell something for which they lost their senses and could not know anything.

7. On the basis of the pleadings of the parties, the following issues were framed :

I. "Whether the action of the management in dismissing Sri Sonika Haro and Sri Barnbas Dang w.e.f. 2-4-93 is justified ?

II. If not, to what relief the workmen are entitled ?

III. Whether the domestic enquiry conduted by the management is fair and proper ?"

To establish their respective cases the Ist party-management examined four witnesses and the 2nd party examined only one witness before this Tribunal. At the outset it is pertinent to mention here that the management may rely upon the domestic enquiry to justify its action. It may request the Tribunal to permit it to adduce additional evidence to prove the case on merit, in case the domestic enquiry is found to have not been properly conducted. It may also simultaneously adduce evidence to prove the fairness of the domestic enquiry and the case on merit. In the case at hand the Ist party-management has led evidence to prove the fairness of the domestic enquiry and the case on merit simultaneously. If the domestic enquiry is held to be fair and proper the Tribunal need not go to the merit of the case.

Issue No. III :

8. A domestic enquiry is said to be fair and proper if it has been conducted adhearing the principles of natural justice, a prima facie case is there against the delinquent and the action taken against him is bonafide. Now it is to be seen whether these conditions have been satisfied in this case.

9. Natural justice demands that the delinquent must be heard before any adverse order is passed against him. In domestic enquiry, such hearing must be a personal hearing. In the present case both the 2nd party workmen were issued with chargesheets, they attended the domestic enquiry along with their co-worker Mr. Trenjit Mohanto. They cross examined the two witnesses examined on behalf of the management. They also gave their statement where they admitted the charge. So it cannot

be said that the 2nd party workman were not heard.

10. Natural justice also demands that the copies of findings of the enquiry committee and the proceedings of the domestic enquiry should be supplied to the delinquent. In the present case, the 2nd party workmen have admitted to have received the copies of the enquiry report. It is found from the enquiry report, that copies of the enquiry proceedings were also given to them.

11. Natural justice further demands that the E.O. must not be biased against the delinquent. In the present case there is nothing to show that the E.O. had any bone to pick up with the 2nd party workmen.

12. Furthermore, natural justice demands that the findings of the E.O. must be supported by reasons. In this case the E.O. has given reasons for the conclusion he arrived at so there is no violation of the principles of natural justice.

13. Now it is to be seen whether there is a prima facie case against the 2nd party workman. In deciding whether there is a prima facie case against a delinquent, the Tribunal cannot sit in appeal over the findings of the E.O. It cannot also reappraise the evidence or hold the evidence as inadequate. It can interfere with the findings of the E.O. if there is no evidence to support it or if the evidence is such that no reasonable person would on its basis come to such a finding. It can also reject the finding if it is otherwise perverse.

14. In this light, now it is to be seen, whether there is a prima facie case against the 2nd party workmen. Both the second party workmen have been charge for wilful neglect of duty on the allegation that on 30-11-92 while they were in 'C' shift duty i.e. from 10.00 P.M. to 6.00 A.M. of the next day, because of their negligence, theft in respect of some detonators, some copper strips and some lightening arrestors was committed from the magazine which they were guarding. Two witnesses were examined on behalf of the management before the enquiry officer to establish this charge. It is found from the evidence of M.W. 2 a mining mate that on 1-12-92 at about 6.00 A.M. When he went to the manazine to bring explosives. He found the door of the detonator chamber of the magazine in broken state and the lock thereof lying on the ground. Then he went to the Chowkidar shed and found both the Chowkidars (2nd party workmen) were sleeping. He called them two to three times whereafter they woke up. When questioned the 2nd party workmen expressed that as they went asleep they could not know any thing about the incident. This witness was cross-examined by the 2nd party workmen, but nothing substantial could be elicited from him in their favour. On perusal of the evidence of M.W. 2, the manager examined in the domestic enquiry it is found that on 1-12-92 at about 6.00 A.M. getting information from a mazdoor, about the commission of theft from the magazine house, he immediately rushed to the spot and found M.W. No. 1 along with both the 2nd party workmen present there. When he went to the magazine house he found the door of the detonator in open state and the lock thereof lying under the ground in broken condition. Tallying with the stock register when he made physical verification of the stock, 4571 pieces of detonators about 50 kg of copper strips and 5 kg of lightening arrestors were found to have missed. When asked the 2nd party workmen replied that in the night of occurrence they were awake upto 11.00 P.M. Whereafter they went asleep. So they could not know about the incident. The evidence of M. W. 1 and 2 corroborates with each other in material particulars. In their examination before the enquiry officer the 2nd party workmen gave the same statement. Ext. 5/a the F.I.R. lodged by M.W. 1 before the O.I.C. Lahuripara P.S. and the earlier explanations (Ext 5/b and 5/c) given by the 2nd party workmen corroborate the evidence of M.W. 1, 2 and the 2nd party workmen. The subsequent explanations as per Ext. A & B wherein it has been mentioned that in the night of occurrence some miscreants caught hold of the 2nd party workmen and made them to smell some thing per force for which they lost their senses and could not know anything about the incident do not inspire confidence. So it cannot be said that there is no evidence at all against the 2nd party workmen, or the evidence is such that no reasonable person could have on its basis come to the conclusion as arrieved by the enquiry officer. The finding is also not otherwise perverse. Accordingly it is held that there is a prima facie case against the 2nd party workmen.

15. As stated earlier fairness of the domestic enquiry also requires that the action of the management must be bonafide. The delinquent must not be a prey of unfair labour practice and victimisation. In other words, he must not be made a scope goat without any fault of his own. In the instant case there is nothing in the record to infer that the 2nd party workmen were punished without any fault of their own. Malafide intention of the employer can also be inferred if the punishment inflicted upon the delinquent is shockingly disproportionate to the misconduct. Malafide intention cannot be inferred from mere disproportionate punishment. In the case at hand the punishment inflicted upon the 2nd party workmen cannot be said as shockingly disproportionate to their misconduct.

16. Issue No. I and II.—For the sake convenience these issues are dealt with together. It is a recognised principle of jurisprudence that the punishment must be comensurate with the gravity of the offence. In the instant case the offence committed by the 2nd party workmen is that while on duty they went asleep after 11.00 P.M., on the night of occurrence, even though as watch-

men it was their duty to guard the magazine throughout the night. Because of this negligence the 1st party sustained a loss of Rs. 9539.34 paise. There is nothing in the record to show that either of the 2nd party workmen had committed any misconduct previously. So in my view the punishment of dismissal inflicted against them is disproportionately heavy. It would meet the ends of justice if two increments of each of the 2nd party workmen as stopped with future effect. There is nothing in the record showing gainful employment of the 2nd party workmen during their dismissal period. But since more than five years have already been elapsed since the termination of service of the 2nd party workmen it would meet the ends of justice if 50 per cent of back wages is paid to each of them.

16. Therefore, under such facts and circumstances the order of dismissal passed against the 2nd party workmen is hereby quashed. They are reinstated in service with 50 per cent back wages. But their two increments fallling due from the date of termination of service be stopped with future effect. The parties to bear their own cost. Accordingly the award is passed.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 5 अगस्त, 1998

का०आ० 1667.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जलींग लन्गलोटा आयरन एण्ड मैंगनीस माइन्स और एस्सल माइनिंग एण्ड इण्डस्ट्रीज लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-98 को प्राप्त हुआ था ।

[सं० एल-26012/8/95-आई०आर० (विविध)]
बी० एम० डेविड, डस्क अधिकारी

New Delhi, the 5th August, 1998

S.O. 1667.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Jelling Langlotta Iron and Manganese Mines M/s. Essal Mining and Industries Ltd., and their workman, which was received by the Central Government on 5-8-98.

[No. L-26012/8/95-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 92/97 (C)

Dated, the 30th June, 1998

PRESENT :

Shri R. N. Biswal, L.L.M.,
(O.S.J.S. Sr. Branch),
Presiding Officer.

Industrial Tribunal,
Rourkela.

BETWEEN

Sr. Vice-President,
(Mines), Jelling
Langlotta Iron and
Manganese Mines,
M/s. Essel Mining and Industries
Ltd., Burbil, Keonjhar. ...Ist party.

AND

Smt. Hema Tanty,
W/o Shri Dinabandhu Tanty,
Kapoor, Nutting, Jalanga,
Jode, Keonjhar. ...IInd party.

APPEARANCES :

For the Ist party—Sri N. Agarwal, Personnel Officer.

For the IInd party—In person.

AWARD

The Government of India in Ministry of Labour, Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide reference No. L-26012/8/95-IR (Misc.) dated 20-10-95 :

"Whether the action of the management of Jalling Langlotta Iron and Manganese Mines of M/s. Essel Mining and Industries Ltd. in terminating the services of Smt. Hema Tanty w.e.f. 19-6-92 was justified ? If not, to what relief the workman is entitled ?"

2. The case of the 2nd party workman represented through the General Secretary of North Orissa Workers Union in short is that she was working as a General Mazdoor on permanent basis in the crusher plant of the 1st party management. While on leave she fell ill for which she could not join her duty in time. After getting cured she submitted an application alongwith a medical certificate to the Mining Superintendent to allow her to join in duty. But the Welfare Officer and Commercial Manager of the Ist party told her that the application would be sent to head office for necessary order and if it was ordered in her favour, she would be allowed to join in duty. Ultimately the Ist party management terminated her from service w.e.f. 19-6-92 which is illegal and against the principles of natural justice.

3. As against this, the Ist party management contended that the 2nd party workman absented from duty without any information w.e.f. 23-3-92. On 28-3-92 the management issued a letter to the 2nd party workman asking her to resume duty immediately. It was also mentioned in the letter that unless she resumed duty, the diciplinary action would be taken against her. Though the letter was received by the 2nd party workman, she neither reported for duty nor gave any information, so on 11-4-92 the Ist party management sent another letter asking her to explain as to why her name would not be struck off the register. She received the letter on 11-4-92 but kept silent. Again on 30-5-92 the Ist party management issued a show cause notice where she was called upon to give explanation as to why her name would not be struck off from company's register. Again the 2nd party workman kept mum. Under such circumstances, the Ist party management was constrained to struck off her name from the roll of the company w.e.f. 19-6-92.

4. The Ist party management specifically denied the averment of the 2nd party workman that she remained absent on leave. According to it the second party workman never submitted any medical certificate or application prior to 12-7-93. She also did not approach either the Commercial Manager or the Welfare Officer. Hence the allegation that both of them told her that the application would be sent to head office for order was without any leg to stand.

5. On the basis of the above pleadings of the parties, the following two issues were framed :

(i) "Whether the action of the management in terminating the services of Smt. Hema Tanty w.e.f. 19-6-92 was justified ?

(ii) If not to what relief the workman is entitled ?

6. To establish its case the parties examined only one witness each.

7. Issue No. I.—It is found from the evidence of W.W. No. 1 (2nd party workman) that in the year 1992 she under went tubectomy operation in Gloss Hospital, Jode. As the wound could not be healed up she under went treatment as an indoor patient for three months. After being discharged from the hospital she went to Pal Babu, the then Welfare Officer of the Ist party and gave an application supported by medical certificate to regularise her leave. But instead of regularising her leave, the Ist party management terminated her service w.e.f. 19-6-92. Neither the copy of application nor the medical certificate said to have been given to Mr. Pal has been filed in this case. If such a petition supported with medical certificate was given to Mr. Pal there is no reason why he would have suppressed it. So it does not inspire confidence that such an application was given to Mr. Pal. During cross-examination, M.W. No. 1 stated that she had applied for leave for undergoing tubectomy operation through one Mr. Pati, who was working as a mate under the Ist party. Neither the copy of the application was proved before this tribunal nor Mr. Pati was examined to substantiate this plea. Moreover, in her statement of claim the 2nd party workman did not whisper a word about tubectomy operation. So it cannot be held that the 2nd party workman had applied for leave for undergoing tubectory operation. She remained absent from duty unauthorisedly. It transpires from the evidence of W.W. No. 1, the Personnel Officer of the Ist party management that the 2nd party workman absented herself from duty from 22-3-92. So on 28-3-92 the Mining Superintendent got a letter, (Ext. A) served upon her asking her to resume duty. When she did not resume duty on 11-4-92 the Mining Superintendent issued a notice vide Ext. B to show cause as to why her name would not be struck off from 'B' register for unauthorised absence. There was no reply to it also. Again on 30-5-92 another notice, vide Ext. D was issued to her to show cause as to why disciplinary action would not be taken against her. When the 2nd party workman neither resumed duty nor gave any explanation to the show cause notices, the Ist party management was constrained to struck her name off the roll of the company on 19-6-92. There is nothing to disbelieve the evidence of M.W. No. 1.

8. Admittedly no formal chargesheet has been framed against the 2nd party workman in this case. So the authorised representative appearing for the 2nd party workman submitted that when no formal charges had been framed against 2nd party workman, the order of striking her name off the roll of the Ist party management was illegal. As against this, the learned auhorised representative of the Ist party management submitted that the 2nd party workman remained absent from duty without any intimation to the management. So on 20-2-92 the Ist party management issued her a notice vide Ext. A asking her to resume duty. But she kept mum. Again on 11-4-92 and 30-3-93, the Ist party management issued a show cause notice vide Ext. B and C to show cause as to why her name would not be struck off from the company's register. But there was no response from the side of the 2nd party workman. So at last the Ist party management was constrained to struck off her name from the roll of the company vide order dated 19-6-92 with immediate effect. In such circumstances no formal charge was required to be framed against the 2nd party workman. In support of his submission the learned authorised representative of the Ist party management relied upon the decision "The Tata Engineering and Locomotive Company Ltd., Jamshedpur Vs. The Presiding Officer, Industrial Tribunal, Ranchi and another" reported in (1) LLJ, (High Court of Patna, Ranchi Bench) at page 403. In this case the services of the respondent No. 2 was terminated on the ground of his absence without leave or permission. The Honourable High Court held that ". . . . . even if no formal charge was delivered to respondent No. 2, his discharge from service could not have been held to be bad in law". I am in one with the submission of the learned authorised representative of the Ist party in this regard. So it is held that only because no formal charge was formed against the 2nd party workman it cannot be held that termination of her service is illegal.

9. In the present case admittedly retrenchment benefits under section 25 of the I.D. Act have not been given to the workman. So the learned authorised representative of the 2nd party workman submitted that the termination of the service of the 2nd party workman without giving her retrenchment benefit is illegal. In counter the learned representative of the Ist party management submitted that termination of service is a condition precedent for getting retrenchment benefit. In the case in hand since the 2nd party workman abandoned the service it cannot be said that she was retrenched; and as such she is not entitled to get any retrenchment benefits. In support of his submission he relied upon the decision "Kshetriya Shri Gandhi Ashram Magahar Vs. Ram Samuih Mayurya and Others" reported in 1990 (Vol. 61) F.L.R. (Allahabad High Court) at page where his lordship held that "In cases where services stand terminated automatically, principles of retrenchment cannot be applied. Abandonment of job is one such instance. If the workman himself willingly abandoned his job it cannot be said that he has been retrenched and the question of paying compensation in these circumstances does not arise". In this case the workman remained absent for two years. It was published in the newspaper that his application for leave had already been rejected he was absent without leave and he was being treated, as haying abandoned his job.

10. In the case at hand as found from Ext. D, the name of the 2nd party workman was struk off from the roll of the company as she absented herself from duty. The absented herself from duty only for 2 months 27 days. There is nothing in the record to show that the management ever brought to the notice of the 2nd party workman that her absence would be treated as abandonment of service. The certified standing orders of the Ist party does not contain any deeming provision to the effect that if a workman remains absent unauthorisedly for a particular period it would be deemed that he/she abandoned the job. So in the present case the same of the 2nd party workman was struck off the roll of the Ist party company for her unauthorised absence and nothing more. The learned authorised representative of the Ist party management again relied upon the decision "Management of Guest Keen Williams Ltd. Vs. Presiding Officer, if Additional. Labour Court, Bangalore & another" reported in (I) LLJ 1992 (Karnataka High Court) at page 846 where their Labour Court, Bangalore & another reported in (I) LLJ tract of service by remaining absent without permission it is not retrenchment. In this case clause 20 of the Standing Orders of the company reads as follows :

> "20.—Absence without leave.—Any workman who remains absent for 10 consecutive working days without prior sanction shall be deemed to have left the company service without notice thereby terminating his contract of service. If he gives an explanation to the satisfaction of the management for such absence, the company may at its discretion permit the workman to reioln duty. If the workman is allowed to rejoin duty, the company at its discretion may credit the unauthorised absence against leave, if any, due to the workman or convert the whole or part of his unauthorised absence as leave without wages".

11. The service of the workman having been terminated because of the operation of clause 20 of the standing orders and not by any action on the part of the management the honourable High Court held that it is not a case of retrenchment.

12. In the decision "L Robert D'souze Vs. the Executive Engineer, Southern Railway and another" reported in (I) FLR 1982 (Supreme Court) at page 250 the apex court held that ".....Striking off the name of a workman from the rolls without any thing more constitutes retrenchment within the meaning of the expression retrenchment in section 2(oo)". This decision naturally is to be preferred to the two preceding decisions.

13. Further more, in the decision "Madhabananda Jena Vs. Orissa State Electricity Board and others" reported in (I) LLJ 1990 (Orissa High Court) at page 463 our own Honourable Court held that "Striking our the name of the petitioner, a workman under the Industrial Dispute Act, from the Muster Roll amounts to termination of his service and such termination of service is retrenchment within

the meaning of section 2(oo) of the Industrial Disputes Act .....". It transpires from the evidence of the W.W. No. 1 (2nd party workman) that she worked under the 1st party management for 7 years where from her name was struck off from the roll of the company. So she is entitled to the benefits of Sec. 25. F of ID Act. Section 25.F of the I.D. Act reads as follows :—

"No workman employed in any industry who has been in continuous service for not less then one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the resasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalant to fifteen days overage pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner in service on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the Official Gazette)."

Admittedly the 2nd party workman has neither been given one month notice nor she has been paid wages of one month in lieu of notice. The retrenchment benefit under 25.F (b) of the I.D. Act has also not been given to her. Compliance of those two conditions is mandatory. Since the Ist party management has not complied these two conditions, the order of termination of service of the 2nd party workman with effect from 19-6-92 is not justified. Accordingly issue No. 1 is answered in favour of the workman.

Issue No. 2 ;

15. In view of my finding in Issue No. 1 the 2nd party workman is entitled to be reinstated in service. More than 6 years has already been lapsed since the termination of service of the 2nd party workman. So in my view it would meet the ends of justice if 50 per cent instead of full back wages is paid to her. Accordingly it is ordered that the 2nd party workman is reinstated in service with 50 per cent back wages. Parties to bear their own cost.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 5 अगस्त, 1998

का०आ० 1668.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पुरनापानी लाईमस्टोन एण्ड डैलोमाइट क्वारी के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-98 को प्राप्त हुआ था ।

[सं० एल-29012/6/92-आई०आर (विविध)]

बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 5th August, 1998

S.O. 1668.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Purnapani Limestone & Dolomite Quarry and their workman, which was received by the Central Government on the 5-8-98.

[No. L-29012/6/92-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL

ROURKELA

Industrial Dispute Case No. 22/97(c)

Dated, the 26th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer,
Industrial Tribunal, Rourkela.

BETWEEN :

The General Manager,
Purnapani Limestone & Dolomite
Quarry of Raw Material Divn.
SAIL, Rourkela-11 .. Ist party

AND

The General Secretary,
North Orissa Workers Union,
Rourkela-12,
Dist. Sundergarh .. IInd party

APPEARANCE :

For the Ist party — None

For the IInd party — None.

AWARD

The Government of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (i) and sub-section 2(A) of section 10 of the Industrial Dispute Act, 1947 have referred the following dispute vide reference No. L-29012/6/92-IR (Misc) dt. 28-10-92 for adjudication.

"Whether the action of the management of Purnapani Limestone and Dolomite Quarry of Raw Material Division, SAIL, Purnapani Justified in treating the date of birth of Shri Markand Dass as 2-8-33 inspite of the certificate issued by the Department of Health and Family Planning of the Government of Orissa showing his date of birth as 2-8-38 ? If not to what relief is the workman entitled to?"

2. The case was fixed on 22-5-98 for hearing. Since neither of the parties appeared before this Tribunal on that date, it can be presumed that, at present there is no dispute between them or they

have amicably settled the dispute out side the Court in the mean time. Accordingly No Dispute Award is passed.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 5 अगस्त, 1998

का०आ० 1669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भउला चरोमाईट माईन्स आफ फारकोर के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-8-98 को प्राप्त हुआ था ।

[सं० एल-2901 2/46/95-आई०आर० (विविध)]
बी० एम० डेविड, डेस्क अधिकारी

New Delhi, the 5th August, 1998

S.O. 1669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Boula Chromite Mines of FACOR and their workman, which was received by the Central Government on the 5-8-98.

[No. L-29012/46/95-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 90/97(c)

Dated, the 26th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN :

The Agent,
Boula Chromite Mines of
FACOR, At/P.O. Dhamuryajapur,
Dist. Keonjhar-758078 .. Ist party

AND

Shri Purna Chandra Mohanty,
At : Lingapala, P.O. Soro,
Dist. Balasore-756060. .. IInd party.

APPEARANCE :

For the Ist party—None

For the IInd party—None.

AWARD

The Govt. of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (i) and sub-section 2(A) of section 10 of the Industrial Dispute Act, 1947 have referred the following dispute vide reference No. L-29012/46/95-IR(Misc.) dated 4-9-95 for adjudication.

"Whether the action of the management of Boula Chromite Mines in terminating the Services of Shri Puran Chandra Mohanty is justified ? If not, to wnat relief the workman is entitled ?"

2. The case was fixed on 21-5-98 for appearance of parties and for hearing. Since neither of the parties appeared before this Tribunal on that date, it can be presumed that, at present there is no dispute between them or they have amicably settled the dispute out side the Court in the mean time Accordingly No Dispute Award is passed.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 6 अगस्त, 1998

का०आ० 1670.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रीजनल प्रोविडेन्ट फण्ड कमिश्नर, राउरकेला के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 6-8-98 को प्राप्त हुआ था ।

[सं० एल- 42012/176/93-आई. आर./(डी.यू)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 6th August, 1998

S.O. 1670.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Regional Provident Fund Commissioner, Rourkela and their workman, which was received by the Central Government on 6-8-98.

[No. L-42012|176|93-IR(DU)
K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA.

Industrial Dispute Case No. 54|97 (C)

Dated, the 29th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN :

The Regional Provident Fund Commissiones, Sub-Regional Office, Mangal Bhawan, Rourkela-1 .. Ist party

AND

The General Secretary, Employees Provident Fund Staff Union, Sub-Regional Office, Ist Floor, Mangal Bhawan, Rourkela-1, Dist. Sundergarh . IInd party

APPEARANCE :

For the Ist Party—None.

For the IInd Party—None.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 have referred the following disputes for adjudication vide No. L-42012|176|93 (IR) dt. 10-1-95 :

"Whether the action of the management of Regional Provident Fund Commissioner, Sub-Regional Office, Rourkela not promoting Sri Lok Nath Das as UDC in the month July 1986 and promoting his junior Sri Anand Babul Chandra Nag as UDC in the year 1990 was justified ? If not, to what relief the workman is entitled to ?".

2. The case was fixed on 26-5-98 for hearing, Since neither of the parties appeared before this Tribunal on that date, it can be presumed that, at present there is no dispute between them or they have amicably settled the dispute out side the Court in the mean time. Accordigly No Dispute Award is passed.

R.N.BISWAL, Presiding Officer

नई दिल्ली, 6 अगस्त, 1998

का०आ० 1671.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रीजनल प्रोविडेन्ट फण्ड कमिश्नर, राऊरकेला के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राऊरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-98 को प्राप्त हुआ था ।

[सं० एल-42011/38/93-आई०आर० (डी०यू०)]
के० वी० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 6th August, 1998

S.O. 1671.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Regional Provident Fund Commissioner, Rourkela and their workman, which was received by the Central Government on the 6-8-98.

[No. L-42011/30/93-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

Industrial Dispute Case No. 53|97(C)

Dated, the 8th May, 1998

PRESENT :

Shri R. N. Biswal, LL.M.,
(O.S.J.S. Sr. Branch)
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN :

Regional Provident Fund Commissioner, Sub-Regional Office, Mangal Bhawan, Rourkela-1 .. Ist party

AND

General Secretary,
Employees Provident Fund
Staff Union,
Sub-Regional Office,
Mangal Bhawan,
Rourkela-1 IInd party

APPEARANCE :

For the Ist party—None.

For the IInd party—None.

AWARD

The Govt. of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide reference No. L-42011|38|93-IR(DU) dated 29-12-94 for adjudication :

"Wnether the action of the management of Regional Provident Fund Commissioner, Sub-Regional Office, Rourkela not giving special pay to Shri D. Naik, UDC w.e.f. 11-11-91 was justified ? If not, to what relief the workman is entitled to ?"

2. The case was fixed on 20-4-98 for hearing. Since neither of the parties appeared before this Tribunal on that date, it can be presumed that, at present there is no dispute between them or they have amicably settled the dispute out side the Court in the mean time. Accordingly No Dispute Award is passed.

R. N. BISWAL, Presiding Officer.

नई दिल्ली, 6 अगस्त, 1998

का०आ० 1672.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिन्टेन्डेन्ट आफ पोस्ट आफिसेज, दुमका के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं० 2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-98 को प्राप्त हुआ था :

[सं० एल-40012/34/90-आई०आर० (डी०यू०)]

के० वी० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 6th August, 1998

S.O. 1672.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Post Offices, Dumka and their workman, which was received by the Central Government on tne 6-8-98.

[No. L-40012/34/90-IR(DU)]

K. V. B. UNNY, Dsk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, DHANBAD

In the matter of a reference under section 10(1) (d) of the Industrial Disputes Act, 1947.

Reference No. 44 of 1990

PARTIES :

Employers in relation to the management of Senior Supdt. of Post Office, Dumka.

AND

Their Workmen.

PRESENT :

Shri B. B. Chatterjee.

Presiding Officer.

APPEARANCES :

For the Employers : None.

For the Workmen : None.

STATE : Bihar. INDUSTRY : Postal

Dated, the 22nd July, 1998

AWARD

By Order No. L-40012|34|90-I.R. (D.U.) dated 20-11-90 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of Sub-Sec. (i) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of Shri Anil Kumar Thakur for reinstatement with full back wages to the post of ED Packer is justified ? If not, to what relief the workman concerned is entitled to ?"

2. The order of reference was received in this Tribunal on 31-12-1990. Despite registered notices issued to the parties the concerned workman did not appear to take any step in this case till 8-6-1998. It, therefore, appears that the concerned workman is not interested to prosecute the present reference case.

3. In such circumstances I render a 'no dispute' award in the present reference case.

B. B. CHATTERJEE, Presiding Officer

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